United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL

76-7425

United States Court of Appeals

For the Second Circuit

AEROTRADE, INC. & AEROTRADE INTERNATIONAL, INC.,

Plaintiff,

against

REPUBLIC OF HAITI,

Defendant-Appellee,

against

HARTFORD ACCIDENT & INDEMNITY COMPANY,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

HENDLER & MURRAY
Attorneys for Appellant
15 Park Row
New York, N. Y. 10038

ANDREAS F. LOWENFELD
Attorney for Defendant-Appellee
40 Washington Square South
New York, N. Y. 10012

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1976

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -X

AEROTRADE, INC., and AEROTRADE INTERNATIONAL, INC.,

Plaintiff,

-against-

REPUBLIC OF HAITI,

Defendant-Appellee,

-against-

HARTFORD ACCIDENT & INDEMNITY COMPANY,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

- -X

DOCKET ENTRIES.

Date	Proceedings
1973	
Aug. 17	Filed Complaint Issued Summons.
Aug. 23	Filed attachment bond in the sum of $40,000. - Hartford Accident & Indemnity Co.
Aug. 21	Filed affdvt. of James O. Byers in support of Order of Attachment
Aug. 21	Filed pltffs' memorandum of law in support of appl. for order of attachment.

DOCKET ENTRIES

Date	Proceedings
Aug. 21	Filed Order of Order of Attachment fixing undertaking of plaintiff in the sum of $40,000. condition as indicated; ordered that the Sheriff of the City of New York or Sheriff of any County of the State of New York, or the U.S. Marshal, SDNY levy within his jurisdiction up to an amount as will satisfy any judgment which may be obtained, together with porbable int., etc. -- Weinfeld, J. (m/n)
Sept. 13	Filed certificate of mailing by the Clerk of the Court that the summons and complaint was mailed by registered mail, return receipt requested, #305918 to: Republic of Haiti National Palace Port of Prince, Haiti
Sept. 20	Filed Order of attachment. Ordered that pltfs. undertaking is fixed in the sum of $40,000; Ordered that the Marshal, USDC SDNY levy within his jurisdiction upon such property at any time before final judgment described in Seh. "A" in which deft. has an interest and upon debts owing to the deft. as will satisfy pltf's. demand in the complaint, together with probable interest. costs, etc. m/n Weinfeld, J.
Sept. 23	Filed Marshals return served on First National City Bank; Canadian Imperial Bank of Commerce; by Jan Atias dtd 8/23/73
Oct. 1	Filed Affidavit and Memorandum of First National City Bank in Opposition to Pltffs. Motions for discovery and contempt.
Sept. 19	Filed pltf's motion for an order directing First Natl. City Bank to produce books, documents, etc. ret. Oct. 2, 1973 and affdt.
Oct. 3	Filed affdt. of Luckner Cambronne (for deft.)
Oct. 3	Filed memorandum of law in support of motion for discovery and contempt by pltf.

DOCKET ENTRIES

Date	Proceedings
Oct. 3	Filed memo end. on pltf's. motion dated Sept. 19, 1973--Motion denied with prej. So ordered. Weinfeld, J. m/n
Oct. 1	Filed for Deft. First National City Bank Affidavit and Memorandum of First National Bank in opposition to Pltffs' Motions for discovery & contempt.
Oct. 5	Filed Order of Attachment against the property of the deft. Weinfeld, J.
Oct. 9	Filed for Pltff. Affidavit in support of Pltffs' application for Order of Attachment.
Nov. 5	Filed Memorandum on Behalf of Deft. Republic of Haiti in Support of Motion to dismiss.
Nov. 5	Filed Notice of Motion returnable Nov. 20, 1973 to dismiss the Pltff. Complaint.
Nov. 13	Filed stip. and order adj. deft's motion to dismiss to Dec-11-73; parties to serve briefs by 11-19-73; hearing before State Department will be on 11-26-73 -- Weinfeld, J.
Nov 13	Filed stip. and order that pltff's motions for discovery and contempt against FIRST NATIONAL CITY BANK are withdrawn. First National City Bank hereby agrees to turn over to the US Marshal funds pursuant to the order of attachment dated Oct-5-73. - Weinfeld, J.
Nov. 19	Filed Stipulation that deft's motion to dismiss notice for argument will be heard on 11/27/73 - Weinfeld, J.
Nov. 21	Filed memorandum on behalf of defendant Republic of Haiti in opposition to pltff's motion concerning service of process.
Nov. 20	Filed Transcript of record of proceedings dtd. 10/5/73
Nov. 30	Filed for Republic of Haiti - Supplemental Affidavit of Andreas F. Lowenfeld/

DOCKET ENTRIES

Date	Proceedings
Dec. 4	Filed affdt. and pltfs. OSC. ORDERED that deft. show cause on Dec. in Rm.2704 at 2:15pm why an order should not be made herein directing the U.S. Marshal to place monies subject to an order of attachment of this court dated Oct. 5, 1973, etc. ORDERED that personal service of a copy of this order and other papers upon defts. counsel and the U.S. Marshal on or before Dec. 3, 1973 at 3:30pm. Weinfeld, J.
Dec. 4	Filed affdt. of Joseph P. Marro (atty. for US Marshal) in opposition pltfs. motion for an order directing the US Marshal to place the monies subject to an order of attachment of this Court, in an int. bearing account.
Dec. 5	Filed memo end. on pltfs. OSC dated Dec. 4, 1973-- Motion consented stip. and order signed this date. Weinfeld, J. m/n
Dec. 5	Filed stip. and order that the said monies will remain subject to the Court's order of attachment dated Oct. 5, 1973 and that said monies will be placed in an interest bearing bank account bearing interest at the prevailing commercial rate at the First National City Bank with First National City Bank as escrow agent and that upon release of said monies by the U. S. Marshal, the US Marshal should be discharged and released from responsibility for the said monies So ordered, Weinfield, J. m/n
1974 Mar. 7	Filed supplemental memorandum of deft. Republic of Haiti.
Mar. 7	Filed defts. supplemental affdt. of Andreas Lowenfeld in support of motion to dimiss complaint.
May 28	Filed pltfs. memorandum of law in opposition to defts. motion to dismiss the complaint.
May 28	Filed pltfs. opposing affdt. of Howard Breindel.
May 28	Filed pltfs. reply affdt. of Howard Breindel.
May 28	Filed pltfs. reply memorandum of law.

DOCKET ENTRIES

Date	Proceedings
May 28	Filed pltfs. supplemental memorandum of law.
May 28	Filed pltfs. memorandum of law.
May 28	Filed pltfs. affdt. and notice of motion for an order directing adequate service of process has been effected upon deft., etc. as ret. on: Nov 27, 1974.
May 24	Filed OPINION# 407.8--***The complaint is dismissed and the order of attachment vacated. Weinfeld, J. m/n
May 30	Filed pltfs. notice of appeal to the USCA from the order entered action on May 24, 1974. (copies mailed)
Jun 3	Filed memo end. on unsigned OSC with a stay--Motion disposed of as indicated upon stenographic record. Submit order agreed to as to Weinfeld, J. m/n
Jun 5	Filed ORDER--Ordered that the order of attachment is vacted and the marshal forthwith return all property attached to the 1st Natl. City Bank of NY, 399 Park Ave, NYC to the acct. of Banque Nationale Republique d'Haiti. Weinfeld, J. m/n
Jun 6	Filed true copy of order of attachment filed Sept. 20, 1973 with Marshals return.
June 3	Filed stipulation of withdrawal of appeal by pltf. from the order May 24, 1974 without prej.
July 10	Filed Transcript of record of proceedings, dated May 30, 1974
Jun 11	Filed notice of entry of order vacating attachment filed 6-5-74 with Marshals return----order complied with on 6-6-74 and paid to First National City Bank of NY., 399 Park Ave. NYC. $867,000.00

DOCKET ENTRIES

Date	Proceedings
Dec. 13	Filed defts. affdt. and notice of motion for an order to enter judgment against the Hartfored Accident and Indemnity Co. for the a[illegible] of $35,000 plus interest on acct. of bond #4191234 given as security for legal costs and damages of deft. in connection with attachment of deft.s. property, etc. ret. oj: Jan. 7, 1975 at 2:15pm.
Dec. 13	Filed defts. memorandum of law in support of motion to collect on bond.
Dec. 26	Filed stip. and order that deft's motion filed on 12-13-74 is adj. to 1-21-75 -- Weinfeld, J.
1975	
Jan. 17	Filed stip. and order that deft's motion is adj. to 1-28-75 -- Weinfeld, J.
Feb. 4	Filed notice of appearance for Harford Accident and Indemnity Company
Feb. 5	Filed stip. and order that deft's. motion adj. to 2-4-75 Weinfeld, J.
Feb. 6	Filed stipulation of Hartford Accident and Indemnity Company in opposition to motion to collect on bond.
Feb. 6	Filed pltfs' memorandum of law in opposition to defendant Haiti's motion for judgment on the surety bond.
Feb. 6	Filed pltfs' affdvt. of service re memorandum of law in opposition to defendant Haiti's motion for judgment on the surety bond.
Feb. 6	Filed memo endorsed on deft's motion filed 12-13-75 -- Case respectfully referred to Schreiber for hearing of testimony to determine damages. So ordered. -- Weinfeld, J. m.n
Apr. 14	Pre-trial conference held by Mag. Schreiber

DOCKET ENTRIES

Date	Proceedings
Apr. 21	Filed proposed cross-claim and notice of motion by atty's for Hartford Accident & Indemnity Co. for leave to file and serve cross-claim against Aerotrade Inc. and Aerotrade International, Inc.
Apr. 22	Filed memo. endorsed on above motion motion is denied -- Weinfeld, J. m/n
Apr. 44	Filed memorandum in support of motion for leave to assert cross-claim
Apr. 22	Filed affdvt. for Hartford Accident & Indemnity Co. in opposition to the motion of the Republic of Haiti under rule 65.1.
Apr. 22	Filed memorandum of law in opposition to the action of Hartford Accident and Indemnity Co. for leave to assert cross-claim.
Apr. 22	Filed supplemental memorandum in support of motion for leave to assert cross-claim
Apr. 22	Filed memorandum of law in Reply to supplemental memo. of Hartford in support of motion for leave to assert crossclaims.
Apr. 22	Filed memorandum of Hartford Accident and Indemnity Co. in opposition to motion to collect on bond.
Apr. 30	Pre-trial conference held by Mag. Schreiber.
Jun. 12	Pre-trial conference held by Mag. Schreiber.
Oct. 2	Pre-trial conference held by Mag. Schreiber.
1976	
Mar. 22	Filed post hearing reply memorandum of Aerotrade, Inc. and Aerotrade International.
Mar. 22	Filed respondent's proposed findings of fact and conclusions of law.

DOCKET ENTRIES

Date	Proceedings
Jun 10	Filed Duplicate Original of Magistrate Schriebers recommendations.
July 16	Filed OPINION # 44775--Haiti (deft.) is entitled to recover in addition to the counsel fees, the interest it paid to Banque but only on the sum of $867,000 and for the period from the date of the levy upon Banque's funds that is Oct. 5, 1973 to June 10, 1974 when the marshal returned the $867,000 to citibank. Judgment may be entered accordingly. Weinfeld, J. m/n
Aug 27	Filed Judgment #76,792..ordered that deft. Republic of Haiti recover of Hartford Indemnity Co. the sum of $35,000 representing the full amount of the bond given by the respondent, plus interest for a total amount of $39,625.73 - Weinfeld, J. Judgment entered - Clerk. m/n
Sept. 1	Filed by Hartford Accident and Indemnity Co. notice of appeal to the USCA for the 2nd Circuit from Judgment ent. 8-27-76 m/copies.

VERIFIED COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC. AND AEROTRADE INTERNATIONAL, INC., Plaintiffs, -against- REPUBLIC OF HAITI, Defendant.	VERIFIED COMPLAINT 73 CIV.

Plaintiffs, AEROTRADE, INC. and AEROTRADE INTERNATIONAL, INC., by their attorneys REGAN GOLDFARB POWELL & QUINN, for their Complaint herein allege as follows:

1. Plaintiff AEROTRADE, INC. ("AEROTRADE") is a corporation organized and existing under the laws of the State of Florida with offices in Miami Springs, Florida; plaintiff AEROTRADE INTERNATIONAL, INC. ("INTERNATIONAL") is a corporation organized and existing under the laws of the State of Florida with offices in Miami Springs, Florida; defendant REPUBLIC OF HAITI ("HAITI"), being a foreign state, is a non-domiciliary of the State of New York and of the Southern District of New York.

2. Jurisdiction of this action is founded on Section 1332(a)(2) of Title 28, U.S.C. as the matter in controversy herein exceeds $10,000 and is between the plaintiff corporations, citizens of the State of Florida and a foreign state, HAITI.

VERIFIED COMPLAINT

3. Venue is founded on Section 1391(d) of Title 28, U.S.C.

4. Defendant HAITI is sued herein in its proprietary capacity. In that capacity through its ministries, ministers, consuls and ambassadors, and through plaintiffs AEROTRADE and INTERNATIONAL as its purchasing agents, it has done and continues to do business in the State of New York and the Southern District.

5. AEROTRADE and INTERNATIONAL, as purchasing agents for HAITI, have

A. Delivered equipment, performed services and incurred expenses for which reimbursement was agreed to be paid under account with HAITI represented by invoices numbered and dated as per Exhibit A attached hereto* in an amount totalling $77,847.31, no part of which has been paid;

B. Delivered equipment and performed services and incurred expenses for which reimbursement was agreed to be paid under account with the HAITIAN POLICE FORCE, an arm of HAITI represented by invoices numbered and dated as per Exhibit B attached hereto, of which the unpaid balance totals $11,723.04, no part of which has been paid;

C. Incurred expenses for the charter flight of munitions and armaments from Jordan to HAITI and insurance, for which reimbursement was agreed to be paid, in the total amount

* Exhibits not reproduced.

of $62,845.64, no part of which has been paid, invoice attached hereto as Exhibit C.

D. Contracted with HAITI to purchase patrol boats and helicopters as more fully set forth in the contract annexed hereto as Exhibit D for a total price of $3,972,610.00 of which $2,248,610 remains unpaid, together with expenses incurred relating to travel expenses, storage charges, interest, insurance and delinquent charges in an as yet undetermined sum.

E. Repaired and re-equipped C-47 aircraft which services and equipment were agreed to be paid for as per invoice attached hereto as Exhibit E for a total amount outstanding of $64,455.00 no part of which has been paid, expenses incurred relating to travel expenses, storage charges, interest, insurance and delinquent charges in an as yet undetermined sum.

F. Agreed to deliver $647,939.00 of ammunition and armaments as per invoice attached hereto as Exhibit F of which $307,939 remains unpaid.

G. Incurred expenses as agreed for the purchase of T 33 Jet Aircraft Trainer for F 86 program totalling $72,456.90.

6. Plaintiffs have demanded payment of the above monies.

7. By failing to make payment as agreed, defendant HAITI has breached the aforementioned agreements performed and to

be performed to plaintiffs' damage in the aggregate amount of $2,845,876.89.

WHEREFORE, plaintiff AEROTRADE, INC. and plaintiff AEROTRADE INTERNATIONAL, INC. demand judgment against defendant REPUBLIC OF HAITI (a) in the amount of $2,845,876.89 with interest and costs, and (b) granting such other legal and equitable relief as the Court may deem just and proper.

REGAN GOLDFARB POWELL & QUINN

By _____
A MEMBER OF THE FIRM
ATTORNEYS FOR PLAINTIFFS
445 Park Avenue
New York, New York 10022
Tel. No. 421-8800

(Verified by Howard Breindel, August 16, 1973.)

BEST COPY AVAILABLE

ORDER OF ATTACHMENT, DATED AUGUST 21, 1973.

8/21/73

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

AEROTRADE, INC. and AEROTRADE INTERNATIONAL, INC.,

Plaintiffs,

-against-

REPUBLIC OF HAITI,

Defendant.

----------X

ORDER OF ATTACHMENT

73 CIV. 3587

An application having been made by the plaintiffs for an Order of Attachment against the property of the defendant in the above-entitled action,

NOW, upon reading and filing the Summons and Verified Complaint herein, duly sworn to the 16th day of August, 1973, and the affidavit of JAMES O. BYERS, dated August 21, 1973 wherein it appears that a claim for a money judgment exists in favor of the said plaintiffs and against the defendant for the sum stated in the Complaint, namely, ~~$2,045,876.89~~ $ 867,000 with interest thereon, referred to in Paragraphs "4" and "5" of the said affidavit James O Byers, sworn to August 21, 1973

EW

AND it being further shown by said Verified Complaint and the supporting affidavit that the said plaintiffs are entitled to an Order of Attachment against the property of said defendant on the ground that said defendant is not a resident or domiciliary of the State, and that the undertaking required by law having been submitted herewith

ORDER OF ATTACHMENT, DATED AUGUST 21, 1973

NOW, on motion of REGAN GOLDFARB POWELL & QUINN, attorneys for the plaintiffs, it is

ORDERED, that the said plaintiffs' undertaking be and the same hereby is fixed in the sum of $ 40,000 of which amount the sum of $ 35,000 thereof is conditioned that the said plaintiffs will pay to the defendant all legal costs and damages which may be sustained by reason of the attachment if the said defendant recovers judgment or it is finally decided that the plaintiffs were not entitled to an attachment of the said defendant's property and the balance thereof conditioned that the said plaintiffs will pay to the officer serving this Order of Attachement all of his allowable fees, and it is further

ORDERED, that the Sheriff of the City of New York, or the Sheriff of any County of the State of New York, or United States Marshal, levy within his jurisdiction, at any time before final judgment upon such property in which the defendant has an interest and upon such debts owing to the defendant as will satisfy the plaintiffs' demand in the Complaint, together with probable interest, costs and the said officer's fees and expenses, and that he proceed hereon in the manner required by law.

Dated: New York, New York
August 21st, 1973
at 3:20 P.M.

SO ORDERED:

A TRUE COPY
RAYMOND F. BURGHARDT, ETC.
By /s/ Harrison
Deputy Clerk

/s/ Edward Weinfeld
U.S.D.J.

BOND.

FILED
U.S.D.C.
AUGUST 23-73
S.D.N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AERO TRADE, INC., and AERO TRADE INTERNATIONAL, INC.,	
Plaintiffs	#73-CIV-3587 Judge Weinfeld
- against -	
REPUBLIC OF HAITI,	
Defendant.	

WHEREAS, the above named Plaintiffs, AERO TRADE, INC., and AERO TRADE INTERNATIONAL, INC., having applied to one of the Judges of this Court for an order of attachment against the property of the above named Defendant, REPUBLIC OF HAITI, under Rule 64 of the Federal Rules of Civil Procedure;

NOW, THEREFORE, the HARTFORD ACCIDENT AND INDEMNITY COMPANY, of Hartford, Connecticut, a Connecticut corporation, having an office and place of business at 123 William Street, New York, New York 10038, does hereby undertake and become bound in the penal amount of FORTY THOUSAND AND 00/100 ($40,000.00) DOLLARS, of which amount the sum of THIRTY FIVE THOUSAND AND 00/100 ($35,000.00) DOLLARS, as fixed by the Court, thereof is conditioned that the Plaintiffs, AERO TRADE, INC., and AERO TRADE INTERNATIONAL, INC., shall pay to the Defendant, REPUBLIC OF HAITI, all legal costs and damages which may be sustained by reason of the attachment if the Defendant, REPUBLIC OF HAITI, recovers judgment or it is finally decided that the Plaintiffs, AERO TRADE, INC., and AERO TRADE INTERNATIONAL, INC., were not entitled to an attachment of the Defendant's, REPUBLIC OF HAITI, property and the balance thereof or FIVE THOUSAND AND 00/100 ($5,000.00) DOLLARS, is conditioned that the Plaintiffs, AERO TRADE, INC., and AERO TRADE INTERNATIONAL, INC. shall pay to the Marshall all of his allowable fees and expenses.

Dated at New York, New York this 23rd day of August, 1973.

HARTFORD ACCIDENT AND INDEMNITY COMPANY

BY: Grace C. Barrett
Grace C. Barrett, Attorney-in-Fact

BOND NO. 4191234

BOND

Hartford Accident and Indemnity Company

Hartford, Connecticut

Financial Statement, December 31, 1972

ASSETS

S. Government Bonds	$16,614,257.87
nds of other Governments	0
ate, County, Municipal and Miscellaneous Bonds	681,650,140.39
ocks	594,514,211.78
	$1,292,778,610.04
al Estate	$10,594,601.03
sh in Offices and Banks	411,500.43
ents' Balances (Under 90 Days)	0
ndry Assets	25,751,111.16
otal Admitted Assets	**$1,329,535,822.66**

LIABILITIES

Reserve for Claims and Claims Expense		$578,651,790.91
Reserve for Unearned Premiums		356,176,593.48
Reserve for Taxes		21,199,740.00
Miscellaneous Liabilities		16,629,388.94
Total Liabilities		**$972,657,513.33**
Voluntary Reserve	$149,000,000.00	
Capital Paid In	40,000,000.00	
Surplus	167,878,309.33	
Surplus as regards Policyholders		$356,878,309.33
Total Liabilities, Capital Stock and Surplus		$1,329,535,822.66

TATE OF CONNECTICUT,
OUNTY OF HARTFORD, } ss.

H. P. Schoen, President of the Hartford Accident and Indemnity Company, being duly sworn, does hereby certify at the foregoing is a correct statement of the assets and liabilities of the said Company as of December 31, 1972, and in itness whereof said President has hereunto signed and caused the corporate seal to be affixed hereto.

Acknowledged and sworn to before me
this 13th day of February, 1973

James L. Reik

Notary Public
My commission expires March 31, 1973

H. P. Schoen
President

Attest: R. Shuden
Senior Vice President and Comptroller

rm CS-19 H A & I Printed in U. S. A.

BOND

Hartford Accident and Indemnity Company

HARTFORD, CONNECTICUT

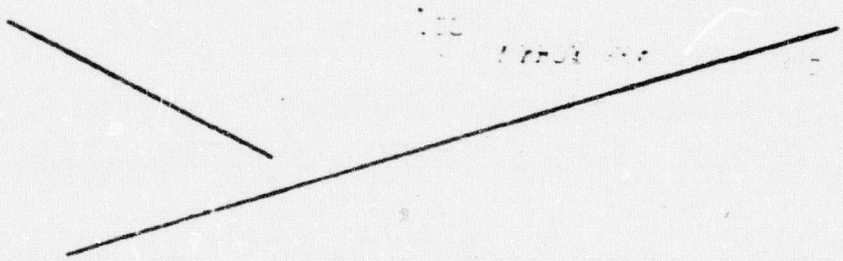
POWER OF ATTORNEY

Know all men by these Presents, That the HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, does hereby make, constitute and appoint

GRACE C. BARRETT, PAUL J. BERTOLOTTI, PAUL J. CONNELLY, R. E. DeHECK, THERESA M. DEVLIN, MARY FISCHETTI, BENNO FRIEDMAN, MARISELA P. KERR, ANGELO LO BIANCO, THOMAS E. McGUIRE, JOSEPH A. McKENNA, C. A. PALMER, MARY SCHARF, CAROLE ANN TADDEO, WENDY L. BABB, DAVID J. BENSON, NOREEN WRYNN, and ROBERT K. YASS,

of NEW YORK, NEW YORK

its true and lawful Attorney(s)-in-fact, with full power and authority to each of said Attorney(s)-in-fact, in their separate capacity if more than one is named above, to sign, execute and acknowledge any and all bonds and undertakings and other writings obligatory in the nature thereof on behalf of the company in its business of guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts other than insurance policies; guaranteeing the performance of insurance contracts where surety bonds are accepted by states and municipalities, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed.



and to bind the HARTFORD ACCIDENT AND INDEMNITY COMPANY thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of the HARTFORD ACCIDENT AND INDEMNITY COMPANY and sealed and attested by one other of such officers, and hereby ratifies and confirms all that its said Attorney(s)-in-fact may do in pursuance hereof.

This power of attorney is granted under and by authority of the following By-Law adopted by the Stockholders of the HARTFORD ACCIDENT AND INDEMNITY COMPANY at a meeting duly called and held on the 10th day of February, 1943.

ARTICLE IV

SECTION 8. The President or any Vice-President, acting with any Secretary or Assistant Secretary, shall have power and authority to appoint, for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, one or more Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-fact and at any time to remove any such Resident Vice-President, Resident Assistant Secretary, or Attorney-in-fact, and revoke the power and authority given to him.

SECTION 11. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power of attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company thereto any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested by one other of such Officers.

BOND

This power of attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Directors of the HARTFORD ACCIDENT AND INDEMNITY COMPANY at a meeting duly called and held on the 13th day of March, 1956.

RESOLVED, that, whereas the President or any Vice-President, acting with any Secretary or Assistant Secretary, has the power and authority to appoint by a power of attorney, for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, one or more Resident Vice-Presidents, Assistant Secretaries and Attorneys-in-fact:

Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

In Witness Whereof, the HARTFORD ACCIDENT AND INDEMNITY COMPANY has caused these presents to be signed by its Vice-President, and its corporate seal to be hereto affixed, duly attested by its Secretary, this 17th day of January, 1968.

Attest: HARTFORD ACCIDENT AND INDEMNITY COMPANY

Secretary *Vice President*

STATE OF CONNECTICUT, } ss.
COUNTY OF HARTFORD, }

On this 17th day of January, A. D. 1968, before me personally came John F. Beardsley, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Vice-President of the HARTFORD ACCIDENT AND INDEMNITY COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

STATE OF CONNECTICUT, } ss.
COUNTY OF HARTFORD. }

Notary Public
My commission expires March 31, 1973

CERTIFICATE

I, the undersigned, Assistant Secretary of the HARTFORD ACCIDENT AND INDEMNITY COMPANY, a Connecticut Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked; and furthermore, that Article IV, Sections 8 and 11, of the By-Laws of the Company, and the Resolution of the Board of Directors, set forth in the Power of Attorney, is now in force.

Signed and sealed at the City of Hartford. Dated the 23rd day of August, 19 73

Assistant Secretary

Form S-2307-7 Printed in U. S. A. 6-72

SEE REVERSE SIDE

BOND

STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

On August 23, 1973, before me personally came Grace C. Barrett, to me known, who, being by me duly sworn, did depose and say that he resides in 4517 Bergenwood Avenue North Bergen, New Jersey; that he is the attorney-in-fact of the HARTFORD ACCIDENT AND INDEMNITY COMPANY the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 33 of the Laws of the State of New York for the year 1909, as amended, constituting Chapter 30 of Cahill's Consolidated Laws of the State of New York, as amended, issued to the HARTFORD ACCIDENT AND INDEMNITY COMPANY his certificate that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings, and other obligations or guarantees, as provided by the Insurance Law of the State of New York and all laws amendatory thereof and supplementary thereto; and that such certificate has not been revoked.

Mary T. Maloney
Notary Public.

MARSHAL'S RETURN OF SERVICE OF ORDER OF ATTACHMENT.

Executed

U.S. MARSHALS SERVICE
INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS. See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last [illegible] of this form. Type or print legibly, insuring [illegible] of all copies. Do not detach any copies.

PLAINTIFF: AEROTRADE INC. et al
DEFENDANT: REPUBLIC OF HAITI
COURT CASE NUMBER: 73CIV 3587
TYPE OF WRIT: ORDER OF ATTACHMENT

SERVE / AT
NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
FIRST NATIONAL CITY BANK
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
399 PARK AVENUE, N.Y. N.Y. 10022.

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW

REGAN GOLDFARB POWELL & QUINN
445 PARK AVE.
NY NY 10022

Number of process to be served with this Form 285: 1 | Total: 1

Check for service on U.S.A.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: John Cotles
TELEPHONE NUMBER: 425-8300
DATE: 10-5-73

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM 285 for first writ only if more than one writ submitted.
DEPOSIT CODE | DIST. OF ORIGIN: 54 | DISTRICT TO SERVE: 3,5 | LOCATION OF [illegible] OFFICE OF DIST. TO SERVE

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.
SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK: D. Farrago | DATE: 10/5/73

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc. at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above): V. FRANZ - ASST. CASHIER
ADDRESS (Complete only if different than shown above)

☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

FEE (If applicable): $ 3 00 | MILEAGE: $ .24

DATE(S) OF ENDEAVOR (Use Remarks if necessary) | DATE OF SERVICE: 10/5/73 | TIME: 3 PM | SIGNATURE OF U.S. MARSHAL OR DEPUTY: Ted Thompson

REMARKS: I further certify that on November 2, 1973, I received a certificate together with a check in the amount of $867,000.00 from First National City Bank Which sum I am holding pending further order of the Court.

Thomas E. Ferrandina, U. S. Marshal, SDNY
By: Sarah C. Sawyer
Sarah C. Sawyer, Admin. Clerk

58

USM-285 (Ed. 7-1-70) — 1. CLERK OF THE COURT

MARSHAL'S RETURN OF SERVICE OF ORDER OF ATTACHMENT

U.S. MARSHALS SERVICE

INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF: AEROTRADE, INC. and AEROTRADE INTERNATIONAL INC. — COURT NUMBER: 73 CIV 3587

DEFENDANT: REPUBLIC OF HAITI — TYPE OF PROCESS: ORDER OF ATTACHMENT

SERVE — NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN: FIRST NATIONAL CITY BANK (INTERNATIONAL BANKING GROUP)

AT — ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code): 399 PARK AVENUE, NEW YORK, NEW YORK

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

JAN ATLAS
REGAN GOLDFARB POWELL & QUINN
445 PARK AVENUE
NEW YORK, NEW YORK

Number of process to be served with this Form 285 (i.e., 1 of 1, 1 of 3, etc.): 1 of 1

Number of parties to be served in this case: 1

Check for service on U.S.A.: ☐ One copy for U.S. Attorney or designee and two copies for Attorney General of the U.S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

LEVY OF ATTACHMENT UPON ALL PROPERTY (OR DEBT) WHICH DEFENDANT HAS AN INTEREST, INCLUDING BUT NOT LIMITED TO AN ACCOUNT OR ACCOUNTS IN THE NAME OF "BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI"

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: Jan Atlas — TELEPHONE NUMBER: PL-4-3000 — DATE: 9-20-73

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Total number of process indicated (Sign only for USM-285 if more than one writ submitted) — Total Process: 54 — District to Serve: 54 — LOCATION OF SUB-OFFICE OR DIST. TO SERVE

I acknowledge receipt for the total number of writs indicated and for the deposit (if any) amount shown. — SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK: Dixon — DATE: 9/20/73

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (if not shown above): [illegible] (VICE PRES.) — ☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode

ADDRESS (Complete only if different than shown above):

DATE(S) OF ENDEAVOR (Use Remarks if necessary) — DATE OF SERVICE: [illegible] — TIME: 2:30 PM — SIGNATURE OF U.S. MARSHAL OR DEPUTY: [illegible]

FEE (If applicable): $ 30 — MILEAGE: $ 120

REMARKS

22a

MARSHAL'S RETURN OF SERVICE OF ORDER OF ATTACHMENT

FIRST NATIONAL CITY BANK

399 PARK AVENUE, NEW YORK, N. Y. 10022

IN REPLY PLEASE QUOTE ERO-3

November 2, 1973

Thomas E. Ferrandina
U.S. Marshal, SDNY
United States Department of Justice
U.S. Court House
Foley Square, New York 10007

Att: Sarah C. Sawyer
Administrative Assistant

Re: Aerotrade Inc., and Aerotrade International, Inc., Plaintiff,
against,
Republic of Haiti, Defendant.

RECEIVED
U.S. MARSHAL
1973 NOV -5 AM 11:24
SDNY

Dear Sir:

Enclosed please find our Cashier's Check number 3138846, in the amount of $867,000.00, payable to your order in the above entitled matter. This check is forwarded to you pursuant to an Order of Attachment served on our Bank on September 21, 1973.

Please advise us immediately of your fees and poundage pursuant to this Order of Attachment.

Very truly yours,

W.J.Kraus
Assistant Cashier

MARSHAL'S RETURN OF SERVICE OF ORDER OF ATTACHMENT

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES MARSHAL
Southern District of New York
United States Courthouse
New York, N.Y. 10007

I HEREBY CERTIFY the within to be a true copy of the Original Warrant of Attachment, as issued to me in the within mentioned action, and that the attachment of which the within is a copy is now in my hands, and that by it I am commanded to attach all estate, real and personal, including money and bank notes, bonds, promissory notes and other instruments for the payment of money, causes of action arising upon contract as well as any and all interest in any partnership, of the defendant, and of the defendants, and of each of them, as stated in said copy herewith served upon you, to which copy you are hereby referred for the name or names of the defendant or defendants whose property is attached within this district (except art cles exempt from execution unless by law specifically made subject to attachment), and that all such property, debts, credits, and effects, and all rights and shares of stock, with all interest and profits thereon, and all dividends thereon, or therefrom, of the said defendant and of said defendants, and of each of them now in your possession or under your control are, and those which may come into your possession or under your control, will be liable to said warrant of attachment, and are hereby attached by me, and you are hereby required to deliver all such money, bank-notes, bonds, promissory notes and other instruments for the payment of money, shares of stock, interest, profits and dividends thereon, and all property capable of manual delivery, into my custody without delay. And I hereby demand and require of you that furthermore pay to me all sums due from you to said defendant or to said defendants and each of them. And I hereby require you to furnish me with a statement as required in that behalf by the Civil Practice Law and Rules (CPLR) of any rights, shares, debts or other property of said defendant and of said defendants, and of each of them, whether capable or incapable of manuel delivery, and in DEFAULT hereof you will be liable to the EXAMINATION and ATTACHMENT in such case provided by law. Civil Practice Law and Rules (CPLR) Secs. 6202, 6211, 6219 and 6220.

TAKE NOTICE THAT, AFTER SERVICE HEREOF UPON YOU, NO DEMAND OR PROPERTY HEREBY ATTACHED CAN BE LAWFULLY RELEASED, BY ORDER OR OTHERWISE, EXCEPT BY THE DIRECTION OF THE UNITED STATES MARSHAL (Civil Practice Law and Rules (CPLR) 6211 (b), 6222 and 6226.

Thomas E. Tarrandino

U. S. MARSHAL, SDNY

Dated: October 5, 1973

By: _____
Deputy U. S. Marshal, SDNY

First National City Bank
399 Park Ave.
New York, N.Y.

MARSHAL'S RETURN OF SERVICE OF ORDER OF ATTACHMENT

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES MARSHAL
Southern District of New York
United States Courthouse
New York, N.Y. 10007

I HEREBY CERTIFY the within to be a true copy of the Original Warrant of Attachment, as issued to me in the within mentioned action, and that the attachment of which the within is a copy is now in my hands, and that by it I am commanded to attach all estate, real and personal, including money and banknotes, bonds, promissory notes and other instruments for the payment of money, causes of action arising upon contract as well as any and all interest in any partnership, of the defendant, and of the defendants, and of each of them, as stated in said copy herewith served upon you, to which copy you are hereby referred for the name or names of the defendant or defendants whose property is attached within this district (except articles exempt from execution unless by law specifically made subject to attachment), and that all such property, debts, credits, and effects, and all rights and shares of stock, with all interest and profits thereon, and all dividends thereon, or therefrom, of the said defendant and of said defendants, and of each of them now in your possession or under your control, are, and those which may come into your possession or under your control, will be liable to said warrant of attachment, and are hereby attached by me, and you are hereby required to deliver all such money, banknotes, bonds, promissory notes and other instruments for the payment of money, shares of stock, interest, profits and dividends thereon, and all property capable of manual delivery, into my custody without delay. And I hereby demand and require of you that furthermore pay to me all sums due from you to said defendant or to said defendants and each of them. And I hereby require you to furnish me with a statement as required in that behalf by the Civil Practice Law and Rules (CPLR) of any rights, shares, debts or other property of said defendant and of said defendants, and of each of them, whether capable or incapable of manuel delivery, and in DEFAULT hereof you will be liable to the EXAMINATION and ATTACHMENT in such case provided by law. Civil Practice Law and Rules (CPLR) Secs. 6202, 6214, 6219 and 6220.

TAKE NOTICE THAT, AFTER SERVICE HEREOF UPON YOU, NO DEMAND OR PROPERTY HEREBY ATTACHED CAN BE LAWFULLY RELEASED, BY ORDER OR OTHERWISE, EXCEPT BY THE DIRECTION OF THE UNITED STATES MARSHAL (Civil Practice Law and Rules (CPLR) 6214 (b), 6222 and 6225

U. S. MARSHAL, SDNY

Dated: September 20, 1973

By: _____
Deputy U. S. Marshal, SDNY

First National City Bank (International Banking Group)
399 Park Avenue
New York, New York

*Levy of attachment upon all property (or debt) which defendant has an interest, including but not limited to an account of accounts in the name of "Banque Nationale de la Republique D'Haiti".

ORDER OF ATTACHMENT, SEPTEMBER 20, 1973.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC. AND AEROTRADE INTERNATIONAL, INC.,

Plaintiffs,

-against-

REPUBLIC OF HAITI,

Defendant.

ORDER OF ATTACHMENT

73 CIV. 3587

RECEIVED
1973 SEP 20 PM 3:50

An application having been made by the plaintiffs for an Order Of Attachment against the property of the defendant in the above-entitled action,

NOW, upon reading and filing the Summons and Verified Complaint herein, duly sworn to the 16th day of August, 1973, the Affidavit of JAMES O. BYERS, dated August 21, 1973, the Affidavit of JAN ATLAS, ESQ., dated September 19, 1973, and the Affidavit of LUCKNER CAMBRONNE, dated September 14, 1973, wherein it appears that a claim for a money judgment exists in favor of the said plaintiffs and against the defendant for the sum stated in the Complaint, namely, $867,000 with interest thereon, referred to in Paragraphs "4" and "5" of the said Affidavit of JAMES O. BYERS, sworn to August 21, 1973,

ORDER OF ATTACHMENT, SEPTEMBER 20, 1973

AND, it being further shown by said Verified Complaint and the Supporting Affidavits that the said plaintiffs are entitled to an Order Of Attachment against the property of said defendant on the ground that said defendant is not a resident or domiciliary of the State of New York, and that the undertaking required by law having been submitted herewith,

NOW, on motion of REGAN GOLDFARB POWELL & QUINN, attorneys for the plaintiffs, it is

ORDERED, that the said plaintiffs' undertaking previously fixed in the sum of $40,000 of which amount the sum of $35,000 thereof is conditioned that the said plaintiffs will pay to the defendant all legal costs and damages which may be sustained by reason of the attachment if the said defendant recovers judgment or it is finally decided that the plaintiffs were not entitled to an attachment of the said defendant's property and the balance thereof conditioned that the said plaintiffs will pay to the officer serving this Order Of Attachment all of his allowable fees, be deemed good and sufficient undertaking for this Order Of Attachment, and it is further,

ORDERED, that the Sheriff of the City of New York, or the Sheriff of any County of the State of New York, or the United

ORDER OF ATTACHMENT, SEPTEMBER 20, 1973

States Marshal, levy within his jurisdiction, at any time before final judgment upon that property described in Schedule "A" annexed hereto and upon such other property in which the defendant has an interest and upon such debts owing to the defendant as will satisfy the plaintiffs' demand in the Complaint, together with probable interest, costs and the said officer's fees and expenses, and that he proceed hereon in the manner required by law.

Dated: New York, New York
September 20, 19

SO ORDERED:

/s/ Edward [illegible]

U.S.D.J.

ORDER OF ATTACHMENT, SEPTEMBER 20, 1973

SCHEDULE A

Any and all bank accounts or other property which exist in the name of BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI.

AFFIDAVIT OF WILLIAM J. KRAUS, SEPTEMBER 28, 1973.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC. and AEROTRADE INTERNATIONAL, INC.,

Plaintiffs,

-against-

REPUBLIC OF HAITI,

Defendant.

73 Civ. 3587 E.W.

ACTION NO. 1

AEROTRADE, INC. and AEROTRADE INTERNATIONAL, INC.,

Plaintiffs,

-against-

FIRST NATIONAL CITY BANK,

Defendant.

73 Civ. 4027 EW

ACTION NO. 2

AFFIDAVIT

STATE OF NEW YORK,
COUNTY OF NEW YORK.

WILLIAM J. KRAUS, being duly sworn, says:

1. I am an Assistant Cashier in the Estates and Restraining Orders Department of First National City Bank ("Citibank"). One of my duties is to check accounts which may be subject to attachments or other legal restraint.

2. On or about August 27, 1973, an order of attachment dated August 21, 1973 was served on Citibank, purporting to attach all property of and debts owing to

AFFIDAVIT OF WILLIAM J. KRAUS, SEPTEMBER 28, 1973

Republic of Haiti in the possession or under the control of Citibank. A copy of said order of attachment is annexed as Exhibit A.

3. Upon receipt of such order, a thorough search was made, according to normal bank procedure, of all bank records for any accounts in the name Republic of Haiti.

4. No such accounts were found. The United States Marshall, and plaintiffs' attorneys, were so notified. A copy of Citibank's letter to the Marshall is annexed as Exhibit B.

5. On or about September 21, 1973, a second order of attachment, dated September 20, 1973, was served on Citibank along with a notice specifying the attachment of any account or accounts in the name "BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI". A copy of the second order of attachment is annexed as Exhibit C.

6. At that time another search was made of Citibank's records.

7. Two accounts were found in the name Banque Nationale de la Republique D'Haiti and, upon advice of counsel, a restraint was duly placed in accordance with said order. The United States Marshall was advised of the restraint, and a copy of a letter to the Marshall is annexed as Exhibit D.

AFFIDAVIT OF WILLIAM J. KRAUS, SEPTEMBER 28, 1973

8. Citibank clears approximately 2,000,000 checks each day. Except for verification of signatures, these checks are processed by computer in accordance with accepted banking practice.

9. Citibank had, and has presently, no knowledge as to whether accounts maintained in the name of Banque Nationale de la Republique D'Haiti represent, in whole or in part, assets of the Republic of Haiti.

William J. Kraus
WILLIAM J. KRAUS

Sworn to before me
September 28, 1973.

S/ JANE DONATH
Notary Public, State of New York
No. 41-0988635 Qualified in Queens Co.
Cert. Filed in New York County
Commission Expires March 30, 1975

EXHIBIT B, ANNEXED TO AFFIDAVIT OF WILLIAM J. KRAUS.

FILE
OPEN ☐
CLOSED ☒

EXO-3

September 13, 1973

Thomas E. Ferrandina
U.S. Marshal SDNY
U.S. Court House
Foley Square
New York, New York 10007

Att: Sarah C. Sawyer - Administrative Assistant

Re: Aerotrade, Inc., and Aerotrade International, Inc., Plaintiff
against
Republic of Haiti, Defendant

Dear Sir:

Pursuant to an Order of Attachment in the above entitled proceeding served on our Head Office on August 27, 1973, we certify that at the time of service of the said Order of Attachment, we were holding no funds or property in the name of Republic of Haiti.

This certificate is based solely upon the books and records of our 399 Park Avenue Branch and our Central Information Records File Department.

Very truly yours,

W. J. Kraus
Assistant Cashier

EXHIBIT D, ANNEXED TO AFFIDAVIT OF WILLIAM J. KRAUS.

FIRST NATIONAL CITY BANK
New York

ERO-3

September 27, 1973

Mr. Thomas E. Ferrandino
U.S. Marshal, SDNY
U.S. Court House
New York, New York 10607

Re: Aerotrade, Inc. and Aerotrade International, Inc., Plaintiff,
against,
Republic of Haiti, Defendant.

Dear Sir:

Pursuant to an Order of Attachment in the above entitled proceeding served on our Head Office on September 21, 1973, we hereby certify that at the time of service of the Order of Attachment, a regular checking account was maintained at our Head Office in the name of Banque Nationale De La Republique De Haiti with a credit balance in excess of $867,000.00.

This certificate is based solely upon the books and records of our 399 Park Avenue Office.

Very truly yours,

W.J. Kraus
Assistant Cashier

AFFIDAVIT OF JAMES O. BYERS, OCTOBER 5, 1973.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- -X

AEROTRADE, INC., and AEROTRADE INTERNATIONAL, INC.,

Plaintiffs,

-against-

REPUBLIC OF HAITI,

Defendant.

73 CIV. 3587

- -X

State of New York,

County of New York, ss:

JAMES O. BYERS, being duly sworn, hereby deposes and says:

1. I am the President of plaintiffs and I submit this Affidavit in support of plaintiffs' application for an Order of Attachment against the property of the defendant.

2. On August 21, 1973, this Court signed an Order of Attachment (a copy of which is annexed hereto as Exhibit "A") against the property of defendant based

AFFIDAVIT OF JAMES O. BYERS, OCTOBER 5, 1973

upon the Verified Complaint and Supporting Affidavit of JAMES O. BYERS, sworn to August 21, 1973 (a copy of which is annexed hereto as Exhibit "B").

3. On August 27, 1973, the United States Marshal personally served a copy of the Order of Attachment upon the FIRST NATIONAL CITY BANK ("CITIBANK") where plaintiffs had been advised defendant maintained a substantial bank account.

4. On September 14, 1973, plaintiffs' counsel was advised by CITIBANK that a statement was being served upon the United States Marshal to the effect that defendant had no bank account with CITIBANK and that CITIBANK was neither in possession or control of any funds or property belonging to defendant.

5. After I was informed of the foregoing by my counsel, I advised them that CITIBANK was in possession of funds belonging to HAITI in an account under the name of BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI ("BANQUE"). As a result, at my direction, plaintiffs' counsel applied for a second Order of Attachment specifically directed to the foregoing account. Subsequently an Order of Attachment was granted, a copy of which is annexed hereto as Exhibit "C". That Order was then vacated.

AFFIDAVIT OF JAMES O. BYERS, OCTOBER 5, 1973

6. It is well known that BANQUE is a wholly-owned arm of the Government of Haiti and that all of the ordinary banking transactions of the Government of Haiti are effectuated through and by BANQUE and that HAITI has no bank accounts in its own name. I am aware of these facts as a result of my experience of five years dealings with the Government of Haiti. In my numberous dealings over this period of time all payments to the plaintiffs for goods and services sold to HAITI were made by checks drawn by HAITI on BANQUE.

7. Annexed hereto as Exhibit "D" is a copy of an envelope of the BANQUE which on its face indicates that the BANQUE is a wholly owned arm of the Government of Haiti.

9. Annexed hereto as Exhibit "E" is a copy of a check payable to LUCKNER CAMBRONNE drawn on the BANQUE. Mr. CAMBRONNE supplied me with this copy of the check and advised me that the check was in payment of money owed to him by HAITI and that in the past all of his salary checks from the Government of Haiti were drawn on the BANQUE. As can be seen from Exhibit "E" the BANQUE check states as follows:

> "BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI
> BANQUE DE L'ETAT HAITIEN AU CAPITAL DE
> VINGT-CINQ MILLIONS DE GOURDES"

The second and third lines of the foregoing quote mean "Bank Of The State of Haiti With a Capital of 25,000,000 Gourdes". In addition, Mr. CAMBRONNE has advised me that based on his experience with the Haitian Government the BANQUE is a wholly owned arm of HAITI and that HAITI effecuates all of its banking transactions through the BANQUE.

9. In view of the vacatur of the second Order of Attachment, time is of the essence and accordingly if an Order of Attachment is granted, it is hereby requested that my counsel be permitted to serve the Order of Attachment rather than the Marshal's Office which cannot move as promptly.

10. As a result of the foregoing, the original Order of Attachment should be amended so as to specifically apply to the BANQUE account at CITIBANK or a new Order of Attachment specifically referring to the BANQUE account at CITIBANK should be granted. In either event, the bond posted by plaintiffs in connection with the original Order of Attachment should continue to stand as security for the Amended Order of Attachment or the new Order of Attachment.

JAMES O. BYERS

Sworn to before me this
5th day of October, 1973,
JACQUELINE L. LUSSIER,
Notary Public, State of New York,
No. 319821031,
Qualified in New York County
Commission expires March 30, 1974.

ORDER OF ATTACHMENT, OCTOBER 5, 1973.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S.D.C. N.Y.
S.D. of N.Y.
10/5/73

AEROTRADE, INC. AND AEROTRADE INTERNATIONAL, INC.,

Plaintiffs,

-against-

REPUBLIC OF HAITI,

Defendant.

ORDER OF ATTACHMENT

73 CIV. 3587

An application having been made by the plaintiffs for an Order Of Attachment against the property of the defendant in the above-entitled action,

NOW, upon reading and filing the Summons and Verified Complaint herein, duly sworn to the 16th day of August, 1973, the Affidavits of JAMES O. BYERS, dated August 21, 1973, and October 5, 1973 with exhibits annexed hereto, wherein it appears that a claim for a money judgment exists in favor of the said plaintiffs and against the defendant for the sum stated in the Complaint, namely, $867,000 with interest thereon, referred to in Paragraphs "4" and "5" of the said Affidavit of JAMES O. BYERS, sworn to August 21, 1973,

ORDER OF ATTACHMENT, OCTOBER 5, 1973

AND, it being further shown by said Verified Complaint and the Supporting Affidavits that the said plaintiffs are entitled to an Order Of Attachment against the property of said defendant on the ground that said defendant is not a resident or domiciliary of the State of New York, and that the undertaking required by law having been submitted herewith,

NOW, on motion of REGAN GOLDFARB POWELL & QUINN, attorneys for the plaintiffs, it is

ORDERED, that the said plaintiffs' undertaking previously fixed in the sum of $40,000 of which amount the sum of $35,000 thereof is conditioned that the said plaintiffs will pay to the defendant all legal costs and damages which may be sustained by reason of the attachment if the said defendant recovers judgment or it is finally decided that the plaintiffs were not entitled to an attachment of the said defendant's property and the balance thereof conditioned that the said plaintiffs will pay to the officer serving this Order Of Attachment all of his allowable fees, be deemed good and sufficient undertaking for this Order Of Attachment, and it is further,

ORDER OF ATTACHMENT, OCTOBER 5, 1973

EW

-- ORDERED, that the United States Marshal, ~~or BEGAM GOLD-FARB POWELL & QUINN~~, levy within the jurisdiction, at any time before final judgment upon that property described in Schedule "A" annexed hereto and upon such other property in which the defendant has an interest and upon such debts owing to the defendant as will satisfy the plaintiffs' demand in the Complaint, together with probable interest, costs and the said officer's fees and expenses, and that he proceed hereon in the manner required by law.

Dated: New York, New York
October 5, 1973

SO ORDERED:

(S/ Edward Weinfeld
U.S.D.J.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By B Edwards
Deputy Clerk

ORDER OF ATTACHMENT, OCTOBER 5, 1973

SCHEDULE A

Any and all bank accounts or other property which exist in the name of BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI.

ORDER OF ATTACHMENT, OCTOBER 5, 1973

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES MARSHAL
Southern District of New York
United States Courthouse
New York, N.Y. 10007

I HEREBY CERTIFY the within to be a true copy of the Original Warrant of Attachment, as issued to me in the within mentioned action, and that the attachment of which the within is a copy is now in my hands, and that by it I am commanded to attach all estate, real and personal, including money and banknotes, bonds, promissory notes and other instruments for the payment of money, causes of action arising upon contract as well as any and all interest in any partnership, of the defendant, and of the defendants, and of each of them, as stated in said copy herewith served upon you, to which copy you are hereby referred for the name or names of the defendant or defendants whose property is attached within this district (except articles exempt from execution unless by law specifically made subject to attachment), and that all such property, debts, credits, and effects, and all rights and shares of stock, with all interest and profits thereon, and all dividends thereon, or therefrom, of the said defendant and of said defendants, and of each of them now in your possession or under your control are, and those which may come into your possession or under your control, will be liable to said warrant of attachment, and are hereby attached by me, and you are hereby required to deliver all such moneys, banknotes, bonds, promissory notes and other instruments for the payment of money, shares of stock, interest, profits and dividends thereon, and all property capable of manual delivery, into my custody without delay. And I hereby demand and require of you that furthermore pay to me all sums due from you to said defendant or to said defendants and each of them. And I hereby require you to furnish me with a statement as required in that behalf by the Civil Practice Law and Rules (CPLR) of any rights, shares, debts or other property of said defendant and of said defendants, and of each of them, whether capable or incapable of manuel delivery, and in DEFAULT hereof you will be liable to the EXAMINATION and ATTACHMENT in such case provided by law. Civil Practice Law and Rules (CPLR) Secs. 6202, 6214, 6219 and 6220.

ORDER OF ATTACHMENT, OCTOBER 5, 1973

TAKE NOTICE THAT, AFTER SERVICE HEREOF UPON YOU, NO DEBT OR PROPERTY HEREBY ATTACHED CAN BE LAWFULLY RELEASED, BY ORDER OR OTHERWISE, EXCEPT BY THE DIRECTION OF THE UNITED STATES MARSHAL (Civil Practice Law and Rules (CPLR) 6211 (b), 6222 and 6225

Thomas E. Fennessy
U. S. MARSHAL, SDNY

Dated: October 5 1973

By: Sarah C. Adams
Deputy U. S. Marshal, SDNY

First National City Bank
399 Park Ave.
New York, N.Y.

NOTICE OF MOTION UNDER RULE 65.1.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC. AND AEROTRADE INTERNATIONAL, INC.,	
Plaintiffs,	37 Civ. 3587
- against -	JUDGE WEINFELD
REPUBLIC OF HAITI,	
Defendant.	NOTICE OF MOTION UNDER RULE 65.1

Please take notice that at 2:15 P.M. on Tuesday, January 7, 1975, or soon thereafter as we may be heard, the undersigned shall move this court at the United States Court House at Foley Square, New York, New York, to enter judgment against the Hartford Accident and Indemnity Company for the sum of $35,000, plus interest thereon and the cost of these proceedings, on account of Bond #4191234 given as security for legal costs and damages of the defendant in connection with attachment of defendant's property at the commencement of this action.

Andreas F. Lowenfeld
Attorney for Defendant
40 Washington Square South
New York, New York 10012
Tele. (212) 598-2321

To: Regan Goldfarb Heller Wetzler & Quinn
445 Park Avenue
New York, New York 10022

AFFIDAVIT OF ANDREAS F. LOWENFELD IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC. AND AEROTRADE INTERNATIONAL, INC.,	37 Civ. 3587
Plaintiffs,	JUDGE WEINFELD
- against -	
REPUBLIC OF HAITI,	AFFIDAVIT
Defendant.	

County of New York)
State of New York) s.s.

ANDREAS F. LOWENFELD, being duly sworn, deposes and says:

1. I am the attorney for the Republic of Haiti, defendant in this case. I make this affidavit in support of defendant's motion under Rule 65.1 to enforce a bond given at the commencement of this action.

2. This motion grows out of an action filed on August 17, 1973, against the Republic of Haiti, and dismissed by this Court pursuant to an opinion and order dated May 24, 1973. Following the filing of the complaint, plaintiffs applied for an order of attachment pursuant to New York Civil Practice Law and Rules § 6201 and Federal Rules of Civil Procedure Rule 4(e). An order of attachment was issued by this Court on October 5, 1973, conditioned upon the filing by plaintiffs of a bond for legal costs and damages which might be sustained by defendant

by reason of the attachment if the defendant Republic of Haiti recovered judgment or if it were finally decided that the plaintiffs were not entitled to such attachment. Plaintiffs did file such a bond, issued by the Hartford Accident and Indemnity Company in the amount of $40,000, of which $5,000 was stated to be for the allowable fees and expenses of the marshal, and $35,000 for the costs and damages of the defendant. A copy of said bond, #4191234 dated August 23, 1973, is attached hereto.

3. On May 24, 1974, judgment was entered in this action in favor of the defendant. Plaintiffs filed a Notice of Appeal on May 29, 1974; following argument before the Court on a motion for stay, plaintiffs withdrew their appeal on June 3, 1974. On June 4, 1974, this Court entered an order vacating the attachment and directing the marshal to return all the property attached to the First National City Bank of New York, 399 Park Avenue, New York, New York, to the account of Banque Nationale de la Republique d'Haiti.

4. The costs to defendant of the attachment in this action were of three kinds: legal fees, miscellaneous costs of litigation including translation of documents and travel to and from Haiti, and interest charges incurred by Banque Nationale on overdrafts necessitated by the unavailability of the funds attached. Since the interest charges substantially exceeded the amount of the bond, no claim is filed in this motion for legal fees and other costs of litigation.

AFFIDAVIT OF ANDREAS F. LOWENFELD IN SUPPORT OF MOTION

5. The interest charges incurred by reason of the attachment totaled $46,810.38. The character of these charges and the means of calculating the said amount of $46,810.38 are explained in the Affidavit of Mr. Antonio André dated November 22, 1974 attached hereto, and in the letter of Mr. George J. Clark, Senior Vice President, First National City Bank, attached to Mr. André's affidavit.

Andreas F. Lowenfeld

Andreas F. Lowenfeld

County of New York)
State of New York) s.s.

Sworn to before me this

12 day of December 1974.

Martha L. Ephraim

MARTHA L. EPHRAIM
Notary Public, State of New York
No. 24-4511669
Qualified in New York County
Commission Expires March 30, 1975

AFFIDAVIT OF ANTONIO ANDRE, ANNEXED TO FOREGOING AFFIDAVIT OF ANDREAS F. LOWENFELD.

BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI

DEPARTEMENT COMMERCIAL

BANQUE DE L'ETAT HAITIEN AU CAPITAL AUTORISE DE CINQUANTE MILLIONS DE GOURDES

TRESORERIE DE L'ETAT ET BANQUE D'EMISSION

SUCCURSALES ET AGENCES DANS TOUS LES PORTS OUVERTS D'HAITI

ADRESSE TELEGRAPHIQUE
INSULAIRE

SIEGE SOCIAL ET BUREAU PRINCIPAL : PORT-AU-PRINCE, HAITI

PORT-AU-PRINCE, LE _____

REFERENCE _____

United States District Court
Southern District of New York

Aerotrade, Inc. and Aerotrade, International, Inc., Plaintiffs,	:	
- against -	:	Affidavit
Republic of Haiti, Defendant,	:	

Port-au-Prince, Haiti } s.s.

ANTONIO ANDRE being duly sworn, deposes and says :

1. I am President and General Manager of Banque Nationale de la Republique d'Haiti. I was appointed to this position by resolution of the Conseil d'Administration on November 26, 1960; my term of office was extended on November 26, 1965 and on October 5, 1970, and continues until October 5, 1975.

In accordance with Article 10 of the Statutes (By-laws) and resolutions passed thereunder, I am the Chief Executive Officer of Banque Nationale, and I am authorized to act for Banque Nationale in all matters concerning litigation in which Banque Nationale may be engaged or by which it may be effected. I have made two previous affidavits in connection with this case, dated respectively October 1, 1973 and March 1, 1974. The purpose of this Affidavit is to explain the financial costs of the judicial attachment from October 5, 1973 to June 10, 1974 of funds of Banque Nationale deposited in Account # 10928785 at the First National City Bank of New York.

AFFIDAVIT OF ANTONIO ANDRE, ANNEXED TO FOREGOING AFFIDAVIT OF ANDREAS F. LOWENFELD

2. As has been previously confirmed to the Court, the account of Banque Nationale de la Republique d'Haiti at the First National City Bank was a working account at a correspondent bank used in connection with all aspects of Banque Nationale's international banking activities, including dealing in drafts, acceptances, and other commercial paper; issuing, confirming, and advising letters of credit; and generally financing Haiti's export and import trade. As dollar liabilities become due, Banque Nationale draws on this account, and as payments are made to Banque Nationale the account is replenished. At various times during the approximately nine month period of the judicial attachment, Banque Nationale's balance in the account was insufficient to cover drafts drawn by Banque Nationale in the normal course of business; these drafts were covered by overdrafts for which First National City Bank charged Banque Nationale interest at a rate something in excess of the prime interest rate then prevailing in New York.

3. At my request in connection with this affidavit, First National City Bank has prepared a separate statement of charges incurred by reason of the unavailability to Banque Nationale of the Funds turned over to the United States Marshal in connection with this action. The statement of First National City Bank, signed by Mr. George J. Clark, Senior Vice President, is attached hereto. The total of charges shown therein is $ 46,810,38. All of said amount is directly attributable to the attachment of funds in this case. No other charges are included in that amount.

Antonio André
President and General Manager

REPUBLIC OF HAITI)
CITY OF PORT-AU-PRINCE) ss:
EMBASSY OF THE UNITED)
STATES OF AMERICA)

Subscribed and sworn to before me this 22nd day of November 1974.

Thomas F. Wilson
Consul of the United States of America

LETTER, DATED OCTOBER 24, 1974, FIRST NATIONAL CITY BANK TO ANTONIO ANDRE, ANNEXED TO AFFIDAVIT OF ANDREAS F. LOWENFELD.

FIRST NATIONAL CITY BANK

GEORGE J CLARK
SENIOR VICE PRESIDENT

399 PARK AVENUE, NEW YORK, N Y 10022

October 24, 1974

eçu le 31 Oct. 1974

Mr. Antonio Andre
President
Banque Nationale de la Republique d'Haiti
Port-au-Prince, Haiti

Dear Mr. Andre:

In accordance with your attorney's request, we have prepared a summary of interest charges to your account incurred as the result of service of an order of attachment in the action Aerotrade Inc. and Aerotrade International Inc. v. Republic of Haiti, U.S. District Court, 73 Civ. 3587. Pursuant to said order of attachment, funds were turned over to the U.S. Marshall on October 31, 1973 and were returned by the U.S. Marshal on June 10, 1974.

Since the balance in your account varied continuously from September 7, 1973, the date of service of the order of attachment, to June 11, 1974, the date the funds were returned to your account, we have computed the charges on a daily basis. A summary of interest charges, totalling $46,810.38, relative to said attachment is attached hereto.

I trust this explanation is satisfactory.

Sincerely,

/enclosure

SUMMARY OF CHARGES, ATTACHED TO FOREGOING LETTER.

SUMMARY OF CHARGES

MONTH	RATE	AMOUNT
September	11.25	$ 749.74
October	11.00	461.04
November	11.25	8,412.04
December	11.25	6.37
January	11.25	6,840.11
February 1-10	11.25	7,018.49
February 10-28	10.50	6,606.61
March	10.25	8,915.95
April	11.50	4,526.42
May	12.75	3,273.61
June 1-11	12.75	
	TOTAL	$46,810.38

AFFIDAVIT OF JEROME MURRAY, DATED JANUARY 24, 1975,
IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC., AND AEROTRADE INTERNATIONAL, INC.,

73 Civ. 3587 EW

Plaintiffs,

-against-

AFFIDAVIT

REPUBLIC OF HAITI,

Defendant.

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JEROME MURRAY, being duly sworn, deposes and says:

1. I am a member of the firm of HENDLER & MURRAY, attorneys for Hartford Accident and Indemnity Company, (hereinafter referred to as "Hartford"), a defendant in this case. I make this affidavit in opposition to the motion of the Republic of Haiti (hereinafter referred to as "Haiti"), under F.R.C.P. 65.1.

2. This action was commenced by plaintiffs Aerotrade Inc., and Aerotrade International, Inc., by filing the complaint on August 17, 1973. Plaintiffs attached $867,000 allegedly the

AFFIDAVIT OF JEROME MURRAY, DATED JANUARY 24, 1975,
IN OPPOSITION TO MOTION

property of Haiti, then in the possession of First National City Bank in New York, on October 5, 1973. Hartford, at the instance of plaintiffs, and upon their agreement and that of James O. Byers and Irene B. Byers, jointly and severally to indemnify Hartford against loss, damage and expense by reason thereof, executed an attachment bond, in the amount of $40,000. The amount of the bond included $5,000 to cover Marshal's fees and that amount is not in issue in this action. The remaining $35,000 was coverage for defendant's costs and damages in the event defendant prevailed.

3. The action was dismissed on May 24, 1974, upon the basis that Haiti, a sovereign state, was immune to suit on this claim in this forum. The attachment was thereupon vacated on June 5, 1974.

4. Haiti has now moved to enforce payment under the bond by entering judgment in favor of Haiti and against Hartford in the sum of $35,000 plus interest and costs.

OPPOSITION TO MOTION

5. It appears that Haiti is not entitled to entry of judgment against Hartford because Hartford is only derivatively liable, that is, liable only if the costs and damages which Haiti

seeks could be awarded against Aerotrade, Inc., and Aerotrade International, Inc. Haiti is not entitled to the award of the costs and expenses sought because of the legal and equitable defenses to this motion asserted by Aerotrade. Therefore, Hartford joins in each and every one of the defenses asserted by Aerotrade Inc., and Aerotrade International, Inc., to defeat Haiti's motion.

6. Although Hartford was a stranger to this action until the present motion, and therefore is not familiar at first hand with the facts and occurrences, a review of the legal papers on file indicates the availability of at least three defenses to wholly or partially defeat Haiti's present motion.

One defense concerns the fact that the present claim on the bond is asserted by the defendant herein, Republic of Haiti. However, it appears from the affidavits of Andreas Lowenfeld, Esq., and Antonio Andre, in support of the motion, that Banque Nationale de la Republique d'Haiti suffered the alleged losses, not defendant Republic of Haiti. Defendant has asserted throughout this action that Banque Nationale de la Republique d'Haiti was a separate entity from defendant, but now seeks to bury this distinction. If as it appears, Banque Nationale de la Republique d'Haiti not Haiti suffered damage due to the attachment, then

AFFIDAVIT OF JEROME MURRAY, DATED JANUARY 24, 1975,
IN OPPOSITION TO MOTION

Haiti's motion to enforce payment under the bond must be defeated.

A second defense concerns the fact that Haiti may not have suffered damage due to the attachment. It appears that the funds attached were in a non-interest bearing account. At the same time that Haiti was allegedly incurring overdrafts caused by the unavailability of the $867,000, other funds sufficient to cover the ov rdrafts may have been on deposit in other accounts. If Haiti failed to mitigate its loss by transferring funds between accounts, then it must be estopped from claiming that loss as damage under the bond.

In addition, Hartford has been damaged by the delay of Haiti in asserting its claim upon the bond. After November 5, 1973, when the motion to dismiss was filed, and after June 5, 1974, when the attachment was released, until December 17, 1974 when Hartford received notice of the instant motion, Hartford received no notification of the attempts to vacate the attachment from any party. If Hartford had been notified it would have proceeded to assure that its sources of indemnity were financially capable of discharging the surety as required by the bond and indemnity agreement and possibly required the applicants and indemnitors to put up collateral. However, during the intervening period, Aerotrade Inc., Aerotrade International, Inc., and its president, James O. Byers, may well have suffered financial reverses.

AFFIDAVIT OF JEROME MURRAY, DATED JANUARY 24, 1975,
IN OPPOSITION TO MOTION

Hartford therefore, may have lost recourse to its indemnitors caused by the lack of notice of attempt to vacate the attachment. Because of this delay in notification, Hartford is discharged from its obligation on the bond to the extent of the loss, and Haiti's motion must be denied in whole or in part.

7. In order to determine the availability of the three above defenses, and any and all defenses interposed by Aerotrade, Inc., and Aerotrade International, Inc., to defeat the pending motion, Hartford respectfully requests that an evidentiary hearing be held during the pendency of this motion.

WHEREFORE, your deponent respectfully requests that the motion of Republic of Haiti under Rule 65.1 be denied in all respects and Hartford Accident and Indemnity Company be granted the costs of this motion and such other and further relief as may be just and proper.

JEROME MURRAY

Sworn to the 24th day
of January, 1975.

FRANCINE WEINTRAUB
Notary Public, State of New York
No. 24-4500
Qualified in Kings County
Commission Expires March 30, 1976

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD, DATED FEBRUARY 4, 1975.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC., AND AEROTRADE INTERNATIONAL, INC.,

Plaintiffs,

- against -

REPUBLIC OF HAITI,

Defendant.

37 Civ. 3587

JUDGE WEINFELD

SUPPLEMENTAL AFFIDAVIT

County of New York)
State of New York) s.s.

ANDREAS F. LOWENFELD, being duly sworn, deposes and says:

1. I am the attorney for the Republic of Haiti, defendant in this case and moving party under Rule 65.1 to enforce a bond given at the commencement of this action.

2. In the memorandum on behalf of Hartford Accident and Indemnity Company in opposition to the motion to collect on the bond, and in the supporting affidavit of its attorney, Mr. Jerome Murray, it is stated that Hartford received no notice that the attachment had been vacated and judgment had been entered in favor of Defendant Republic of Haiti. The facts are that immediately following the return by the Marshal

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD,
DATED FEBRUARY 4, 1975

on June 10, 1974 of the funds held by him pursuant to the attachment, I communicated by telephone with the Surety Bond Claim Department of the Hartford Accident and Indemnity Company. I talked with a Mr. Stephen Pazar of the New York office of the Hartford, who asked that I send him all the relevant documents, and I did so by letter of June 12, 1974. Receipt of my letter and the enclosed documents was acknowledged by letter from Mr. Robert J. Mathieu of the home office of the Hartford, dated June 21, 1974. I also talked by telephone with Mr. Mathieu, to the best of my recollection between the time he mailed the letter of June 21, 1974 and the time that his letter arrived. Copies of my correspondence with the Hartford are attached hereto.

3. Whatever may be the merit of the legal defenses raised by the Hartford, there is no basis for the assertion that it did not have actual notice at the earliest possible date following release of the funds that the attachment which its bond secured had been vacated.

Andreas F. Lowenfeld

Andreas F. Lowenfeld

County of New York)
State of New York) s.s.

Sworn to before me this

4 day of February 1975.

Martha L. Ephraim

MARTHA L. EPHRAIM
Notary Public, State of New York
No. 31-4511089
Qualified in New York County
Commission Expires March 30, 1975

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD,
DATED FEBRUARY 4, 1975

June 12, 1974

WO 4-2702
X287

Mr. Stephen Pazar
Surety Bond Claim Department
Hartford Accident & Indemnity Company
123 William Street
New York, New York 10038

Re: Aerotrade, Inc. v. Republic of Haiti
S.D.N.Y. 37 Civ. 3587

Dear Mr. Pazar:

In accordance with our conversation, I enclose the following documents pertinent to the above-entitled case.

1. Hartford Accident & Indemnity Company Bond #4191234 of August 23, 1973.

2. Order of Attachment dated October 5, 1973 and Notice of Execution thereof by the United States Marshal.

3. Opinion of Hon. Edward Weinfeld dated May 24, 1974 dismissing the complaint and ordering the attachment vacated.

4. Notice of Appeal from the above judgment dated May 29, 1974.

5. Withdrawal of Appeal dated June 3, 1974.

6. Order of Judge Weinfeld directing that the attachment be vacated and that the funds be returned by the marshal.

Needless to say the above documents are not the complete file; if you need any additional documents please let me know.

Sincerely,

Andreas F. Lowenfeld
Attorney for the Republic of Haiti

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD,
DATED FEBRUARY 4, 1975

THE HARTFORD

June 21, 1974

Andreas F. Lowenfeld, Esquire
40 Washington Square South
New York, New York 10012

Bond No. 4191234
Aero Trade, Inc., et al
Republic of Haiti

Dear Mr. Lowenfeld:

This will acknowledge receipt of your letter of June 12, 1974 addressed to Mr. Stephen Pazar of our New York Department, along with copies of the various documents attached to that letter.

I have attempted to contact you by telephone several times but have been unable to reach you.

I am somewhat confused by your letter. I don't know exactly why you have sent this material to us, unless it is your intent to file a claim upon the bond. If it is your intent to claim upon the bond, you must, of course, show us: (1) That you have made demand upon our principal, Aero Trade, Inc.; (2) that the demand has not been satisfied, and (3) the amount of legal costs and damages sustained by reason of the attachment (up to $35,000) and marshal's fees (up to $5,000).

I would point out to you that this is not a forfeiture bond but that the principal, Aero Trade, Inc., is primarily liable to your client.

Hartford Fire Insurance Company
Hartford Accident and Indemnity Company
Hartford Life Insurance Company
Hartford Casualty Insurance Company
New York Underwriters Insurance Company
Twin City Fire Insurance Company

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD,
DATED FEBRUARY 4, 1975

In order to be of some assistance, I am also, on this date, writing to Aero Trade, Inc., and their attorneys in an attempt to learn what the difficulties are in this matter. This letter and all other investigative steps are undertaken with a full reservation of this company's rights and defenses.

Very truly yours,

R Mathieu

Robert J. Mathieu
Fidelity and Surety Claim Dept.

RJM:meg

MEMORANDUM ENDORSED ON NOTICE OF MOTION

Dated: February 4, 1975

Case respectfully referred to Magistrate Schreiber for a hearing and testimony to determine damages.

So ordered,

/s/ Edward Weinfeld
U. S. D. J.

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD, DATED APRIL 22, 1975.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE INC., AND AEROTRADE INTERNATIONAL, INC., Plaintiffs - against - REPUBLIC OF HAITI, Defendant.	73 Civ. 3587 EW Before Magistrate Schreiber Supplemental Affidavit

County of New York)
State of New York) s.s.

ANDREAS F. LOWENFELD, being duly sworn, deposes and says:

1. I am the attorney for the Republic of Haiti, defendant in this case. I make this affidavit in support of defendant's motion under Rule 65.1 to enforce a bond given at the commencement of this action, supplementing my affidavit of December 12, 1974.

2. This motion grows out of an action filed against the Republic of Haiti on August 12, 1973, and dismissed by this court pursuant to an opinion and order dated May 24, 1974. Following the filing of the complaint, plaintiffs applied for an order of attachment pursuant to New York Civil Practice Law and Rules § 6201 and Federal Rules of Civil Procedure Rule 4(e).

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD, DATED APRIL 22, 1975

An order of attachment was issued by the District Court, per Judge Edward Weinfeld, on August 21, 1973 conditioned upon the filing by plaintiffs of a bond for legal costs and damages which might be sustained by defendant by reason of the attachment if the defendant Republic of Haiti recovered judgment or if it were finally decided that the plaintiffs were not entitled to such attachment. Plaintiffs filed such a bond, issued by the Hartford Accident and Indemnity Company, in the amount of $40,000, of which $5,000 was for the allowable fees and expenses of the marshal, and $35,000 was for the costs and damages of the defendant. A copy of the said bond, #4191234, dated August 23, 1973, is attached to the motion to which this affidavit is addressed.

3. On instructions from counsel for plaintiffs, the U.S. marshal served the said Order of Attachment dated August 21, 1973 on the First National City Bank of New York (Citibank). The Order of Attachment was returned unsatisfied, upon certification by Citibank that it held no funds or property in the name of defendant Republic of Haiti. Following an abortive motion to have Citibank cited for contempt, plaintiffs applied for a further Order of Attachment, directing levy upon "any and all bank accounts or other property which exist in the name of Banque Nationale de la Republique d'Haiti." Such an Order

was issued by Judge Weinfeld on October 5, 1973, on the basis of an ex parte motion supported by affidavits of counsel for plaintiffs asserting that funds held in the account of Banque Nationale were owned by the defendant Republic of Haiti. No new bond was required, but the Order of Attachment dated October 5, 1973 stated that it was conditioned upon plaintiffs' undertaking previously fixed, as described in paragraph 2 above. Pursuant to said Order, the U.S. marshal levied upon $867,000 held at Citibank in account number 10928785 in the name of Banque Nationale de la Republique d'Haiti on or about October 5, 1973.

4. On November 5, 1973, Defendant Republic of Haiti moved to dismiss the action, based on three grounds: (1) that it was entitled to sovereign immunity with respect to plaintiffs' claim; (2) that the court lacked subject matter jurisdiction under New York Business Corporation Law § 1314 dealing with actions by non-resident corporations; and (3) that the court lacked jurisdiction in that the defendant Republic of Haiti had not been served with process nor had any property belonging to it been attached within the state, because funds of Banque Nationale were not funds owned by the Republic. Judge Weinfeld, stating that any of the three contentions, if valid, would entitle defendant to prevail, granted the motion to dismiss on the basis of the first ground, and found it unnecessary to consider the other two grounds urged by defendant.

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD, DATED APRIL 22, 1975

5. On May 24, 1974, judgment was entered in this action in favor of the defendant. Plaintiffs filed a Notice of Appeal on May 29, 1974; following argument before Judge Weinfeld on a motion for stay, plaintiffs withdrew their notice of appeal on June 3, 1974. On June 4, 1974, the Court entered an order vacating the attachment and directing the marshal to return all the property attached to the First National City Bank of New York, 399 Park Avenue, New York, New York, to the account of Banque Nationale de la Republique d'Haiti.

6. On December 12, 1974, following attempts to collect on the bond given in this case without the necessity for further judicial proceedings, defendant filed this motion under Federal Rules of Civil Procedure Rule 65.1 to enter judgment against the Hartford Accident and Indemnity Company for the sum of $35,000 plus interest and costs, on account of Bond #4191234 given at the commencement of the action. Hartford opposed the motion, and applied for leave to file a cross-claim for indemnity against plaintiffs on account of any liability that Hartford might have on the bond. At a hearing before Judge Weinfeld on February 4, 1975, decision was deferred on the cross-motion concerning the relations between plaintffs and Hartford; two questions concerning defendant Haiti's claim on the bond were referred to the Magistrate. This affidavit is

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD, DATED APRIL 22, 1975

submitted in response to the questions raised before Judge Weinfeld on February 4, 1975 and discussed briefly with Magistrate Schreiber on the same day.*

7. Defendant in its motion of December 12, 1974, listed three elements of damages arising from the attachment: legal fees, miscellaneous costs of litigation, and interest charges incurred by reason of the attachment. Because the interest charges incurred by reason of the attachment substantially exceeded the amount on the bond, only the latter claim was itemized in the December 12 motion. Since a legal challenge was raised to the claim for interest charges, an itemized claim for attorney's fees and expenses is presented herewith, in paragraph 9 below and the accompanying documentation: The question pertaining to the claim for interest charges, which Judge Weinfeld referred to the magistrate, was twofold:

(i) Hartford and the plaintiffs question the basis for the charges imposed by First National City Bank by reason of the attachment, contending that the documentation in

* The hearing before the Magistrate was twice postponed by agreement of the Magistrate and counsel, pending decision of the issue between the insurance company and plaintiffs. On April 21, 1975, Judge Weinfeld denied the insurance company's motion for leave to file a cross-claim in this proceeding.

support of the claim was insufficiently detailed and -- as to Citibank's communication -- not sworn.

(ii) Hartford and the plaintiffs questioned whether the interest charges incurred by reason of the attachment were incurred by defendant, or whether they were incurred by Banque Nationale, to whom, they argued, the bond did not run.

The first question is easily answered, in the affidavit from the officer of Citibank attached hereto and described in paragraph 8 below. Inquiry by counsel in response to the second question resulted in the conclusion that Banque Nationale had not, as of the date of the present affidavit, taken steps to charge the said interest expenses back to its client, the Republic of Haiti. It is submitted that this fact should not result in an escape by the insurance company from the promise it gave in issuing the bond. Since that question concerns a matter of law, it is not dealt with further in this affidavit, but is the subject of an accompanying memorandum of law.

8. In the motion under Rule 65.1 dated December 12, 1974, it was stated that Citibank's interest charges by reason of the attachment of funds of Banque Nationale amounted to

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD, DATED APRIL 22, 1975

$46,810.38. These charges were described in two documents accompanying the motion papers: (i) a letter from Mr. George J. Clark, Senior Vice President of First National City Bank of New York to Mr. Antonio André, President and General Manager of Banque Nationale and (ii) an affidavit by Mr. André acknowledging the charges and explaining the manner of operation of the account and its use of overdraft facilities in the circumstances caused by the attachment. Mr. Clark's letter was based on calculations performed in the normal course of business by Mrs. Aracy Troxell Dean, Assistant Cashier at the First National City Bank, International Banking Group. Subsequently, at the request of the President of Banque Nationale, Mrs. Dean prepared an affidavit dated March 18, 1975 in which the manner of calculation of the interest charges in question is explained in detail, together with a monthly table of said charges and copies of the relevant Statement of Overdraft Interest prepared monthly by Citibank in respect of the account in question. As Mrs. Dean's affidavit spells out, Citibank charged Banque Nationale interest on all negative balances in the account. Not all of such negative balances were attributable to the attachment; the calculation performed by Mrs. Dean and set forth in her affidavit, was to separate out on a daily basis those charges that were attributable to the attachment from other charges

incurred by Banque Nationale. The result of these calculations, as previously summarized by Mr. Clark, is that the total of interest charges debited to the account of Banque Nationale as the result of the attachment in this case is $46,810.38.

9. In addition to the above interest charges, the attachment and subsequent litigation resulted in charges for legal services performed by deponent through June 1, 1974 of $16,219.80, including disbursements. As can be seen from the enclosed bill dated June 4, 1974, the services performed included investigation of a complex factual and legal problem, on the basis of documents and conversations in French as well as English; preparation of diplomatic correspondence and conferences with the U.S. State Department and officials of the government of Haiti; preparation of various motion papers and affidavits, as well as responses to plaintiffs' motions;* preparation of five memoranda involving numerous novel questions of law in which deponent has special knowledge and experience; and participation in five hearings before Judge Weinfeld plus

* Among these were a motion for an order of attachment of the same account attached in the principal suit, but this time in an action directed against Banque Nationale as the defendant. Judge Weinfeld denied the motion in an opinion issued at the same time as the opinion in the principal action. Aerotrade, Inc. v. Banque Nationale de la Republique d'Haiti, 376 F.Supp. 1286 (1974).

one conference in chambers.** All bills for legal services rendered through June 1, 1974 have been paid, in checks drawn by the Consulate General of the Republic of Haiti on accounts other than the account subject of the attachment.

10. Subsequent to the issuance of the judgment of dismissal in the principal action, deponent has expended substantial time and effort in the attempt to collect on the bond. This effort has included conferences and correspondence looking to collecting on the bond without litigation, preparation of the present motion under Rule 65.1 including necessary research and preparation of affidavits; preparation of affidavit refuting assertion by the insurance company that no notice of the claim had been given to it;* hearing before Judge Weinfeld and conference with Magistrate Schreiber of February 4, 1975; conferences with officials of the government of Haiti and Banque Nationale following the hearing; and preparation of the present affidavit and accompanying memorandum of law. As of the preparation of the present papers, approximately 45 hours have been

**In fact, Judge Weinfeld in open court at the hearing on this motion on February 4, 1975 expressed surprise that the fees had not been higher; the explanation for the relatively modest amount is (i) that deponent, a full-time professor of law does not have the overhead expenses of full-time practitioners, and (ii) that deponent handled the litigation alone, without the multiplication of time charges that occurs when several lawyers regularly confer together or go over one another's drafts.

*This "deferse" was withdrawn by counsel for Hartford at the hearing, as soon as he was shown the copies of the correspondence between his client and deponent.

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD, DATED APRIL 22, 1975

expended in the effort to collect on the attachment bond. Assuming no substantial additional work will be required after the hearing before the Magistrate, a reasonable estimate of the legal fees incurred in connection with the attempt to collect on the bond is $3,500, plus approximately $50.00 in miscellaneous expenses. No payment for these services has been received, nor has any statement therefore been rendered as yet.

11. Summarizing the above, the costs incurred by reason of an attachment found to be wrongful in this case, including the attempt to collect on the bond designed to secure payment of such costs, are as follows:

Interest charges	$46,810.38
Legal Fees and Disbursements in Principal Action	16,219.80
Legal Fees in Motion to Collect Bond (est.)	3,550.00
	$66,580.18

Andreas F. Lowenfeld

County of New York)
State of New York) s.s.

Sworn to before me this 22 day of April, 1975.

Martha L. Ephraim

MARTHA L. EPHRAIM
Notary Public, State of New York
No. 31-4511059
Qualified in New York County
Commission Expires March 30, 1977

AFFIDAVIT OF ARACY TROXELL DEAN, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC., AND AEROTRADE INTERNATIONAL, INC.,	73 Civ. 3587
Plaintiffs,	EW
-against-	Before Magistrate Schreiber
REPUBLIC OF HAITI,	
Defendant.	Affidavit

County of New York)
State of New York) s.s.

ARACY TROXELL DEAN, being duly sworn, deposes and says:

1. I am Assistant Cashier at the First National City Bank of New York, International Banking Group. My office is in the First National City Bank building at 399 Park Avenue, New York, New York 10022. Among my duties is responsibility for Account Number 10928785 in the name of Banque Nationale de la Republique d'Haiti.

2. At the request of the President of Banque Nationale, and in the course of my duties at First National City Bank, I made an analysis of said account of Banque Nationale, with a view to determining charges to the account attributable to the attachment of funds in the account by order of the U.S. District Court in connection with the action brought by Aerotrade, Inc., and Aerotrade International, Inc., against the Republic of Haiti.

AFFIDAVIT OF ARACY TROXELL DEAN, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

A summary of the analysis that I prepared was submitted to Banque Nationale with a covering letter from Mr. George J. Clark, Senior Vice President of First National City Bank, dated October 24, 1974, and, as I am informed, was subsequently submitted to the court. The present affidavit and accompanying records undertake to explain in more detail how the calculation of charges was made.

3. As shown by the monthly "Statements of Overdraft Interest" attached hereto, First National City Bank calculates interest charges on overdrawn balances on a daily basis, figured on the applicable annual interest rate divided by 360. The first column of the Statements list every day of the month covered; the second column lists for each date the Available Balance; the third column, "Back Value Adjustments," represents entries posted after their effective date; and the fourth column represents the "Adjusted Balance" -- i.e., the Available Balance plus or minus back value adjustments. Interest charges are incurred whenever the adjusted balance is negative. The applicable interest rate appears in the fifth column, and the interest charge appears next to any negative balance in the sixth column.* The sum of the daily interest charges for each month appears in the box at the bottom of the Statement of Overdraft Interest, entitled "Current Interest Charge."

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*The seventh column, "Adjusted Charge," is designed to make any necessary corrections, and is not relevant here.

AFFIDAVIT OF ARACY TROXELL DEAN, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

4. As the Statements of Overdraft Interest attached hereto show, not all the negative adjusted balances, and therefore not all the interest charges incurred by Banque Nationale, were attributable to the attachment involved in the present action. Accordingly, in order to ascertain those interest charges that were attributable to the attachment, the following calculation was performed by me: Whenever the negative balance in the Adjusted Balance column exceeded the sum of funds turned over to the Marshal plus additional funds segregated by First National City Bank to cover probable interest, costs and Marshal's fees and expenses --

$867,000.00 + $216,750.00 for a total of $1,083,750.00

the interest charges on such excess were deducted from the interest charges posted on the day in question. Accordingly, the monthly entry under the current interest charge showing all interest on overdrafts incurred by the account in that month was adjusted by subtracting daily interest charges on amounts in excess of $1,083,750. These calculations were as follows:

	Current Interest Charges (From Statement)	Deduction for Unrelated Interest Charges	Interest Charges Attributable to Attachment
Sept.	$ 749.74	$ --	$ 749.74
Oct.	601.14	140.10	461.04
Nov.	15,754.55	~~XXXXX~~ 7,342.51	8,412.04
December	6.37	--	6.37

AFFIDAVIT OF ARACY TROXELL DEAN, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

January	7,192.98	352.87	6,840.11
February	7,040.47	21.98	7,018.49
March	6,606.61	--	6,606.61
April	10,723.59	1,807.64	8,915.95
May	4,526.42	--	4,526.42
June 1-11	3,944.91	671.30	3,273.61
Total			$46,810.38

The right hand column corresponds to the table attached to the letter from Mr. George J. Clark of October 24, 1974 referred to in Paragraph 2 of this Affidavit.

5. To the best of my knowledge and belief the final figure in the right hand column of the table represents the total of interest charges debited to the account of Banque Nationale as the result of the attachment in this action.

Aracy Troxell Dean

Aracy Troxell Dean

AFFIDAVIT OF ARACY TROXELL DEAN, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

County of New York)
State of New York) s.s.

Sworn to before me this
18 day of ~~February~~ MARCH 1975.

Sonia Vergara

SONIA VERGARA
Notary Public, State of New York
No. 41-4503082
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1975

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN.

FIRST NATIONAL CITY BANK
NEW YORK

STATEMENT ~~OF~~
OVERDRAFT INTEREST

ACCOUNT OF
BANQUE NATIONALE DE LA REPUBLIQUE
D'HAITI
PORT-AU-PRINCE
HAITI

PERIOD OF
SEP 1, 1973 - SEP 30, 1973
FOR
SEPTEMBER 1973
ACCOUNT NUMBER
10928785
COUNTRY 246 PC 354

DATE	AVAILABLE BALANCE	BACK VALUE ADJUSTMENTS	ADJUSTED BALANCE	INTEREST RATE	INTEREST CHARGE	ADJUSTED CHARGE
SEP 1	159862713		159862713	11.250		
SEP 2	159862713		159862713			
SEP 3	159862713		159862713			
SEP 4	147799579	-1003767	146795812			
SEP 5	93069643	-72455	92997188			
SEP 6	77410655	-109148	77301507			
SEP 7	160586738	-3470	160583268			
SEP 8	160586738	-3470	160583268			
SEP 9	160586738	-3470	160583268			
SEP 10	176239543		176239543			
SEP 11	146896564	-230447	146666117			
SEP 12	115287954		115287954			
SEP 13	120298694	-38710	120259974			
SEP 14	146996556		146996556			
SEP 15	146996556		146996556			
SEP 16	146996556		146996556			
SEP 17	132259493	-50000	132209493			
SEP 18	145276158	-6379	145269779			
SEP 19	168048527		168048527			
SEP 20	165242841		165242841			
SEP 21	175494852		175494852			
SEP 22	175494852		175494852			
SEP 23	175494852		175494852			
SEP 24	-13487700	-34960	-13522660		4226	
SEP 25	-26853837		-26853837		8392	
SEP 26	-38715994		-38715994		12099	
SEP 27	-35973388		-35973388		11242	
SEP 28	-41615126		-41615126		13005	
SEP 29	-41615126		-41615126		13005	
SEP 30	-41615126		-41615126		13005	

ADJUSTMENT OF INTEREST FOR ANY PERIOD BEYOND THE THREE MONTHS COVERED BY THE "STATEMENT OF OVERDRAFT INTEREST" WILL BE MADE AND YOU WILL BE ADVISED SHORTLY UNDER SEPARATE ADVICE

PERIOD	CURRENT INTEREST CHARGE	PREVIOUS CHARGE SAME PERIOD	ADJUSTED INTEREST CHARGE	TOTAL INTEREST FOR PERIOD
SEP	749.7408			749.7408

WE DEBIT YOUR ACCOUNT THIS AMOUNT $749.74

DFC 8-1-72

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN

FIRST NATIONAL CITY BANK
NEW YORK

STATEMENT OF OVERDRAFT INTEREST

ACCOUNT OF
BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI
PORT-AU-PRINCE
HAITI

PERIOD OF
OCT 1,1973 - OCT 31,1973
FOR
OCTOBER 1973
ACCOUNT NUMBER
10329785

COUNTRY 246 PC 354

DATE	AVAILABLE BALANCE	BACK VALUE ADJUSTMENTS	ADJUSTED BALANCE	INTEREST RATE	INTEREST CHARGE	ADJUSTED CHARGE
OCT 1	330040[illegible]	-100000	-33[illegible]	11.000	10115	
OCT 2	59303470	-19474	59283996			
OCT 3	32834358	-76006	32758352			
OCT 4	25008305		25008305			
OCT 5	8213400		8213400			
OCT 6	8213400		8213400			
OCT 7	8213400		8213400			
OCT 8	8213400		8213400			
OCT 9	26041876		26041876			
OCT 10	17809936	-69306	17740630			
OCT 11	16580529		16580529			
OCT 12	8259247		8259247			
OCT 13	8259247		8259247			
OCT 14	8259247		8259247			
OCT 15	-21094	-14464	-35558		11	
OCT 16	69733614	-53441	69725173			
OCT 17	68107692		68107692			
OCT 18	60087821	-9000	60078821			
OCT 19	53178650		53178650			
OCT 20	53178650		53178650			
OCT 21	53178650		53178650			
OCT 22	53178650		53178650			
OCT 23	38066531	-31381	38035200			
OCT 24	19378337		19378337			
OCT 25	15519755	-282803	15236952			
OCT 26	9476224		9476224			
OCT 27	9476224		9476224			
OCT 28	9476224		9476224			
OCT 29	7443731	-38992	7404739			
OCT 30	-9371442		-9371442		2863	
OCT 31	-154225157	-2500	-154227657		47125	

ADJUSTMENT OF INTEREST FOR ANY PERIOD BEYOND THE THREE MONTHS COVERED BY THE "STATEMENT OF OVERDRAFT INTEREST" WILL BE MADE AND YOU WILL BE ADVISED SHORTLY UNDER SEPARATE ADVICE

PERIOD	CURRENT INTEREST CHARGE	PREVIOUS CHARGE SAME PERIOD	ADJUSTED INTEREST CHARGE	TOTAL INTEREST FOR PERIOD
OCT	601.1403			601.14

WE DEBIT YOUR ACCOUNT THIS AMOUNT $601.14

DPC679 8-72

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN

FIRST NATIONAL CITY BANK
NEW YORK

STATEMENT OF OVERDRAFT INTEREST

ACCOUNT OF
BANQUE NATIONALE DE LA REPUBLIQUE
D' HAITI
PORT-AU-PRINCE
HAITI

PERIOD OF
NOV 1, 1973 - NOV 30, 1973
FOR
NOVEMBER 1973
ACCOUNT NUMBER
10,26705

COUNTRY 240 PC 554

DATE	AVAILABLE BALANCE	BACK VALUE ADJUSTMENTS	ADJUSTED BALANCE	INTEREST RATE	INTEREST CHARGE	ADJUSTED CHARGE
NOV 1	-1752330111	-13170	-1752511811	11.250	54766	
NOV 2	-1984120411		-1984120411		62004	
NOV 3	-1984120411		-1984120411		62004	
NOV 4	-1984120411		-1984120411		62004	
NOV 5	-2105706677	-883637	-2114543041		65079	
NOV 6	-2105706677	-883637	-2114543041		65079	
NOV 7	-2139920399		-2139920399		66873	
NOV 8	-2166013667	-11073	-2166247740		67695	
NOV 9	-2204443663	-10000	-2204543663		68892	
NOV 10	-2204443663	-10000	-2204543663		68892	
NOV 11	-2204443663	-10000	-2204543663		68892	
NOV 12	-2208852223		-2208852223		69027	
NOV 13	-2371810799		-2371810799		74119	
NOV 14	-2454935800		-2454935800		75717	
NOV 15	-2490941444		-2490941444		77842	
NOV 16	-2545745200		-2545745200		79555	
NOV 17	-2545745200		-2545745200		79555	
NOV 18	-2545745200		-2545745200		79555	
NOV 19	-2635826700		-2635826700		82370	
NOV 20	-1539816997		-1539816997		48119	
NOV 21	-1571049668	-159555	-1571209223		49145	
NOV 22	-1571049668	-159555	-1571209223		49145	
NOV 23	-1025344113		-1025344113		32042	
NOV 24	-1025344113		-1025344113		32042	
NOV 25	-1025344113		-1025344113		32042	
NOV 26	852668000		852668000			
NOV 27	1298457211	-3908	1298453303			
NOV 28	1233043442		1233043442			
NOV 29	1171545994		1171545994			
NOV 30	1098165693		1098165693			

ADJUSTMENT OF INTEREST FOR ANY PERIOD BEYOND THE THREE MONTHS COVERED BY THE "STATEMENT OF OVERDRAFT INTEREST" WILL BE MADE AND YOU WILL BE ADVISED SHORTLY UNDER SEPARATE ADVICE

PERIOD	CURRENT INTEREST CHARGE	PREVIOUS CHARGE SAME PERIOD	ADJUSTED INTEREST CHARGE	TOTAL INTEREST FOR PERIOD
NOV	15754.5508			15754.5508

WE DEBIT YOUR ACCOUNT THIS AMOUNT $15754.55

DPC629 8/72

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN

FIRST NATIONAL CITY BANK
NEW YORK

STATEMENT OF OVERDRAFT INTEREST

ACCOUNT OF
BANQUE NATIONALE DE LA REPUBLIQUE
D'HAITI
PORT-AU-PRINCE
HAITI

PERIOD OF
DEC 1,1973 - DEC 31,1973
FOR
DECEMBER 1973
ACCOUNT NUMBER
10928795

COUNTRY 246 PC 792

DATE	AVAILABLE BALANCE	BACK VALUE ADJUSTMENTS	ADJUSTED BALANCE	INTEREST RATE	INTEREST CHARGE	ADJUSTED CHARGE
DEC 1	10981656 9		10981656 9	11.250		
DEC 2	10981696 9		10981696 9			
DEC 3	10130778 3	-10000	10120778 3			
DEC 4	8984894 9		8984894 9			
DEC 5	8771772 0		8771772 0			
DEC 6	8192041 4		8192041 4			
DEC 7	7557941 7		7557941 7			
DEC 8	7557941 7		7557941 7			
DEC 9	7557941 7		7557941 7			
DEC 10	6795104 8		6795104 8			
DEC 11	6527970 4		6527970 4			
DEC 12	6121399 2		6121399 2			
DEC 13	5409104 4		5409104 4			
DEC 14	5015322 6		5015322 6			
DEC 15	5015322 6		5015322 6			
DEC 16	5015322 6		5015322 6			
DEC 17	4883507 9	-794471	4804036 3			
DEC 18	4612492 3	-794471	4533045 2			
DEC 19	4168306 5		4168306 5			
DEC 20	2748544 7		2748544 7			
DEC 21	2022149 9		2022149 9			
DEC 22	2022149 9		2022149 9			
DEC 23	2022149 9		2022149 9			
DEC 24	1635045 5		1635045 5			
DEC 25	1635045 5		1635045 5			
DEC 26	1449051 2		1449051 2			
DEC 27	1431713 0	-544500	1377213 0			
DEC 28	1224220 9		1224220 9			
DEC 29	1224220 9		1224220 9			
DEC 30	1224220 9		1224220 9			
DEC 31	-2037178		-2037178		637	

ADJUSTMENT OF INTEREST FOR ANY PERIOD BEYOND THE THREE MONTHS COVERED BY THE "STATEMENT OF OVERDRAFT INTEREST" WILL BE MADE AND YOU WILL BE ADVISED SHORTLY UNDER SEPARATE ADVICE

PERIOD	CURRENT INTEREST CHARGE	PREVIOUS CHARGE SAME PERIOD	ADJUSTED INTEREST CHARGE	TOTAL INTEREST FOR PERIOD
DEC	6.3708			6.3708

WE DEBIT YOUR ACCOUNT THIS AMOUNT $6.37

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN

FIRST NATIONAL CITY BANK
NEW YORK

STATEMENT OF OVERDRAFT INTEREST

ACCOUNT OF
BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI
PORT-AU-PRINCE
HAITI

PERIOD OF
JAN 1,1974 - JAN 31,1974
FOR
JANUARY 1974
ACCOUNT NUMBER
10928785
COUNTRY 246 PC 792

DATE	AVAILABLE BALANCE	BACK VALUE ADJUSTMENTS	ADJUSTED BALANCE	INTEREST RATE	INTEREST CHARGE	ADJUSTED CHARGE
JAN 1	-20837178	60000000	39628211.250			
JAN 2	-6452042	60000000	-452042		141	
JAN 3	-9460650	60000000	-3460650		1081	
JAN 4	-31162039	59995000	-31167039		9733	
JAN 5	-31162039	59995000	-31167039		9733	
JAN 6	-31162039	59995000	-31167039		9733	
JAN 7	-34956222	59000000	-34956222		10924	
JAN 8	-41931977	60000000	-35901977		11264	
JAN 9	-54380834	60000000	-48380834		15119	
JAN 10	-53368093	60000000	-47368093		14796	
JAN 11	-55416693	59962507	-49476186		15461	
JAN 12	-55416693	59962507	-49476186		15461	
JAN 13	-55416693	59962507	-49476186		15461	
JAN 14	-56626904	60000000	-50626904		15821	
JAN 15	-64797462	60000000	-58797462		18374	
JAN 16	-91562896	52206330	-96356564		26986	
JAN 17	-96151932	60000000	-90151932		28172	
JAN 18	-106730272	59905898	-100874374		31523	
JAN 19	-106730272	59905898	-100874374		31523	
JAN 20	-106730272	59905898	-100874374		31523	
JAN 21	-114425685	60000000	-108425685		33883	
JAN 22	-110476689		-110476689		34524	
JAN 23	-115976729	-5500	-115982229		36244	
JAN 24	-121008935		-121008935		37815	
JAN 25	-125285847		-125285847		39152	
JAN 26	-125285847		-125285847		39152	
JAN 27	-125285847		-125285847		39152	
JAN 28	-137936099		-137936099		43105	
JAN 29	-104956770		-104956770		32799	
JAN 30	-107513601		-107513601		33598	
JAN 31	-118607111		-118607111		37065	

ADJUSTMENT OF INTEREST FOR ANY PERIOD BEYOND THE THREE MONTHS COVERED BY THE "STATEMENT OF OVERDRAFT INTEREST" WILL BE MADE AND YOU WILL BE ADVISED SHORTLY UNDER SEPARATE ADVICE.

PERIOD	CURRENT INTEREST CHARGE	PREVIOUS CHARGE SAME PERIOD	ADJUSTED INTEREST CHARGE	TOTAL INTEREST FOR PERIOD
JAN	7192.98DB			7192.98DB
DEC		6.37DB	.00	6.37
NOV		15754.55DB	15323.30DB	431.25

WE DEBIT YOUR ACCOUNT THIS AMOUNT 7630.16

DFCA2P 8/72

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN

FIRST NATIONAL CITY BANK

NEW YORK

ACCOUNT OF

BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI
PORT-AU-PRINCE
HAITI

STATEMENT OF OVERDRAFT INTEREST

PERIOD OF
FEB 1,1974 - FEB 28,1974
FOR
FEBRUARY 1974
ACCOUNT NUMBER
1092878E

COUNTRY 246 DC 792

DATE	AVAILABLE BALANCE	BACK VALUE ADJUSTMENTS	ADJUSTED BALANCE	INTEREST RATE	INTEREST CHARGE	ADJUSTED CHARGE
FEB 1	649526 23		649526 23	11.250	20298	
FEB 2	649526 23		649526 23		20298	
FEB 3	649526 23		649526 23		20298	
FEB 4	698379 85	-85572	699735 57		21867	
FEB 5	641580 92	-41995	642100 87		20066	
FEB 6	776552 72		776552 72		24267	
FEB 7	869472 04		869472 04		27171	
FEB 8	901412 27	-149363	902905 90		28216	
FEB 9	901412 27	-149363	902905 90		28216	
FEB 10	901412 27	-149363	902905 90	10.500	26335	
FEB 11	1046953 41		1046953 41		30536	
FEB 12	1046953 41		1046953 41		30536	
FEB 13	1159084 56		1159084 56		33807	
FEB 14	675560 40	-54504	676105 44		19720	
FEB 15	789783 51		789783 51		23035	
FEB 16	789783 51		789783 51		23035	
FEB 17	789783 51		789783 51		23035	
FEB 18	789783 51		789783 51		23035	
FEB 19	894784 35		894784 35		26099	
FEB 20	959449 15	-47000	959496 15		27985	
FEB 21	990821 02		990821 02		28899	
FEB 22	1021775 07		1021775 07		29802	
FEB 23	1021775 07		1021775 07		29802	
FEB 24	1021775 07		1021775 07		29802	
FEB 25	1056800 63		1056800 63		30823	
FEB 26	653362 79		653362 79		19058	
FEB 27	610012 50		610012 50		17792	
FEB 28	693151 58		693151 58		20217	

ADJUSTMENT OF INTEREST FOR ANY PERIOD BEYOND THE THREE MONTHS COVERED BY THE "STATEMENT OF OVERDRAFT INTEREST" WILL BE MADE AND YOU WILL BE ADVISED SHORTLY UNDER SEPARATE ADVICE

PERIOD	CURRENT INTEREST CHARGE	PREVIOUS CHARGE SAME PERIOD	ADJUSTED INTEREST CHARGE	TOTAL INTEREST FOR PERIOD
FEB	7040.4700			7040.4700

WE DEBIT YOUR ACCOUNT THIS AMOUNT $7040.47

DPC629 8/72

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN

FIRST NATIONAL CITY BANK
NEW YORK

STATEMENT OF OVERDRAFT INTEREST

ACCOUNT OF
BANQUE NATIONALE DE LA REPUBLIQUE
D'HAITI
PORT-AU-PRINCE
HAITI

PERIOD OF
MAR 1,1974 - MAR 31,1974
FOR
MARCH 1974
ACCOUNT NUMBER
1092785

COUNTRY 246 PC 792

DATE	AVAILABLE BALANCE	BACK VALUE ADJUSTMENTS	ADJUSTED BALANCE	INTEREST RATE	INTEREST CHARGE	ADJUSTED CHARGE
MAR 1	767847 19		767847 19	10.250	21862	
MAR 2	767847 19		767847 19		21862	
MAR 3	767847 19		767847 19		21862	
MAR 4	785289 34		785289 34		22359	
MAR 5	565957 24	32690	566299 14		18971	
MAR 6	676499 85		676499 85		19251	
MAR 7	763363 31		763363 31		21734	
MAR 8	873851 77		873851 77		24881	
MAR 9	873851 77		873851 77		24881	
MAR 10	873851 77		873851 77		24881	
MAR 11	903863 03		903863 03		25735	
MAR 12	916672 36		916672 36		26100	
MAR 13	954866 80		954866 80		27187	
MAR 14	1021825 68		1021825 68		29094	
MAR 15	1071373 63		1071373 63		30504	
MAR 16	1071373 63		1071373 63		30504	
MAR 17	1071373 63		1071373 63		30504	
MAR 18	615016 19		615016 19		17511	
MAR 19	194201 68		194201 68		5532	
MAR 20	260783 56		260783 56		7425	
MAR 21	383002 24		383002 24		10905	
MAR 22	473128 94		473128 94		13471	
MAR 23	473128 94		473128 94		13471	
MAR 24	473128 94		473128 94		13471	
MAR 25	589945 16	40000	589945 16		16783	
MAR 26	709639 70	132214	707957 56		20157	
MAR 27	723794 38	18000	723974 38		20613	
MAR 28	847942 91		847942 91		24143	
MAR 29	878028 05		878028 05		24999	
MAR 30	878028 05		878028 05		24999	
MAR 31	878028 05		878028 05		24999	

ADJUSTMENT OF INTEREST FOR ANY PERIOD BEYOND THE THREE MONTHS COVERED BY THE "STATEMENT OF OVERDRAFT INTEREST" WILL BE MADE AND YOU WILL BE ADVISED SHORTLY UNDER SEPARATE ADVICE

PERIOD	CURRENT INTEREST CHARGE	PREVIOUS CHARGE SAME PERIOD	ADJUSTED INTEREST CHARGE	TOTAL INTEREST FOR PERIOD
MAR	6606.61DB			6606.61DB

WE DEBIT YOUR ACCOUNT THIS AMOUNT $6606.61

DPC679 8-72

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN

FIRST NATIONAL CITY BANK NEW YORK

ACCOUNT OF
BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI
PORT-AU-PRINCE
HAITI

STATEMENT OF OVERDRAFT INTEREST

PERIOD OF
APR 1,1974 - APR 30,1974
FOR
APRIL 1974
ACCOUNT NUMBER
10928785
COUNTRY 246 PC 792

DATE	AVAILABLE BALANCE	BACK VALUE ADJUSTMENTS	ADJUSTED BALANCE	INTEREST RATE	INTEREST CHARGE	ADJUSTED CHARGE
APR 1	-900707611		-900707611	11.500	28773	
APR 2	-957295581		-957295581		30580	
APR 3	-1000161441		-1000161441		31950	
APR 4	-1081063304		-1081063304		34534	
APR 5	-1115845556	-200000	-1116045556		35651	
APR 6	-1115845556	-200000	-1116045556		35651	
APR 7	-1115845556	-200000	-1116045556		35651	
APR 8	-1285030883	-200000	-1285230883		41056	
APR 9	-1479402553		-1479402553		47259	
APR 10	-1616675665		-1616675665		51644	
APR 11	-1709157500		-1709157500		54598	
APR 12	-1713716699		-1713716699		54744	
APR 13	-1713716699		-1713716699		54744	
APR 14	-1713716699		-1713716699		54744	
APR 15	-1193662225		-1193662225		38131	
APR 16	-1206852592		-1206852592		38552	
APR 17	-1221531005		-1221531005		39021	
APR 18	-1376774477		-1376774477		43980	
APR 19	-1391568888		-1391568888		44453	
APR 20	-1391568888		-1391568888		44453	
APR 21	-1391568888		-1391568888		44453	
APR 22	-1412141883	-785556	-1412927439		45135	
APR 23	-945742441		-945742441		30211	
APR 24	-1009499880		-1009[illegible]9880		32248	
APR 25	-983544557		-983544557		31419	
APR 26	-351881665		-351881665		11241	
APR 27	-351881665		-351881665		11241	
APR 28	-351881665		-351881665		11241	
APR 29	-267401003	-386679	-267787682		8554	
APR 30	-201825447		-201825447		6447	

ADJUSTMENT OF INTEREST FOR ANY PERIOD BEYOND THE THREE MONTHS COVERED BY THE "STATEMENT OF OVERDRAFT INTEREST" WILL BE MADE AND YOU WILL BE ADVISED SHORTLY UNDER SEPARATE ADVICE.

PERIOD	CURRENT INTEREST CHARGE	PREVIOUS CHARGE SAME PERIOD	ADJUSTED INTEREST CHARGE	TOTAL INTEREST FOR PERIOD
APR	10723.59DB			10723.59DB

WE DEBIT YOUR ACCOUNT THIS AMOUNT $10723.59

DPC629 8/72

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN

FIRST NATIONAL CITY BANK
NEW YORK

STATEMENT OF OVERDRAFT INTEREST

ACCOUNT OF
BANQUE NATIONALE DE LA REPUBLIQUE
D'HAITI
PORT-AU-PRINCE
HAITI

PERIOD OF
MAY 1, 1974 - MAY 31, 1974
FOR
MAY 1974
ACCOUNT NUMBER
1 1028785

COUNTRY 246 PC 797

L

DATE	AVAILABLE BALANCE	BACK VALUE ADJUSTMENTS	ADJUSTED BALANCE	INTEREST RATE	INTEREST CHARGE	ADJUSTED CHARGE
MAY 1	29257796		29257796	12.750	10367	
MAY 2	33556591		33556591		11895	
MAY 3	47589068		47589068		16854	
MAY 4	47589068		47589068		16854	
MAY 5	47589068		47589068		16854	
MAY 6	59507970		59507970		21076	
MAY 7	66186017		66186017		23441	
MAY 8	69998916		69998916		24791	
MAY 9	73360644		73360644		25982	
MAY 10	17747281		17747281			
MAY 11	17747281		17747281			
MAY 12	17747281		17747281			
MAY 13	6337382		6337382			
MAY 14	3825360		3825360			
MAY 15	4037819		4037819		1430	
MAY 16	12493708		12493708		4425	
MAY 17	18801106	2000	18701106		6623	
MAY 18	18801106	2000	18701106		6623	
MAY 19	18801106	2000	18701106		6623	
MAY 20	22705495		22705495		8043	
MAY 21	25069919	133614	25303313		8926	
MAY 22	34645196		34645196		12277	
MAY 23	50979147		50979147		18062	
MAY 24	67060839		67060839		23751	
MAY 25	67060839		67060839		23751	
MAY 26	67060839		67060839		23751	
MAY 27	67060839		67060839		23751	
MAY 28	69960507		69960507		24778	
MAY 29	80717467		80717467		28587	
MAY 30	84347089		84347089		29873	
MAY 31	94076771		94076771		33319	

ADJUSTMENT OF INTEREST FOR ANY PERIOD BEYOND THE THREE MONTHS COVERED BY THE "STATEMENT OF OVERDRAFT INTEREST" WILL BE MADE AND YOU WILL BE ADVISED SHORTLY UNDER SEPARATE ADVICE.

PERIOD	CURRENT INTEREST CHARGE	PREVIOUS CHARGE SAME PERIOD	ADJUSTED INTEREST CHARGE	TOTAL INTEREST FOR PERIOD
MAY	552567			552567

WE DEBIT YOUR ACCOUNT THIS AMOUNT 552567

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN

FIRST NATIONAL CITY BANK
NEW YORK

STATEMENT ~~OF~~
OVERDRAFT INTEREST

ACCOUNT OF
BANQUE NATIONALE DE LA REPUBLIQUE
D'HAITI
PORT-AU-PRINCE
HAITI

PERIOD OF
JUN 1,1974 - JUN 30,1974
FOR
JUNE 1974
ACCOUNT NUMBER
10928785
COUNTRY 246 PC 792

DATE	AVAILABLE BALANCE	BACK VALUE ADJUSTMENTS	ADJUSTED BALANCE	INTEREST RATE	INTEREST CHARGE	ADJUSTED CHARGE
JUN 1	-940 767 71		-940 767 71	12.750	333 19	
JUN 2	-940 767 71		-940 767 71		333 19	
JUN 3	-1 098 733 32		-1 098 733 32		389 13	
JUN 4	-1 391 447 01	-7600	-1 391 447 01		492 80	
JUN 5	-1 473 651 45		-1 473 651 45		521 92	
JUN 6	-1 504 125 54		-1 504 125 54		532 71	
JUN 7	-936 634 82		-936 634 82		331 72	
JUN 8	-936 634 82		-936 634 82		331 72	
JUN 9	-936 634 82		-936 634 82		331 72	
JUN 10	-979 219 21		-979 219 21		346 81	
JUN 11	25 690 31		25 690 31			
JUN 12	185 464 47		185 464 47			
JUN 13	75 164 62		75 164 62			
JUN 14	-74 814 20	-800 80	-74 814 20		26 50	
JUN 15	-74 814 20	-800 80	-74 814 20		26 50	
JUN 16	-74 814 20	-800 80	-74 814 20		26 50	
JUN 17	-411 837 22		-411 837 22		145 86	
JUN 18	-774 773 95		-774 773 95		274 40	
JUN 19	-1 440 564 91		-1 440 564 91		510 20	
JUN 20	-1 276 482 06		-1 276 482 06		452 80	
JUN 21	-1 373 981 89		-1 373 981 89		486 62	
JUN 22	-1 373 981 89		-1 373 981 89		486 62	
JUN 23	-1 373 981 89		-1 373 981 89		486 62	
JUN 24	-1 455 472 82		-1 455 472 82		515 48	
JUN 25	-674 670 73		-674 670 73		238 95	
JUN 26	-614 875 68		-614 875 68		217 77	
JUN 27	-796 253 08		-796 253 08		282 01	
JUN 28	-934 854 24		-934 854 24		331 09	
JUN 29	-934 854 24		-934 854 24		331 09	
JUN 30	-934 854 24		-934 854 24		331 09	

ADJUSTMENT OF INTEREST FOR ANY PERIOD BEYOND THE THREE MONTHS COVERED BY THE "STATEMENT OF OVERDRAFT INTEREST" WILL BE MADE AND YOU WILL BE ADVISED SHORTLY UNDER SEPARATE ADVICE.

PERIOD	CURRENT INTEREST CHARGE	PREVIOUS CHARGE SAME PERIOD	ADJUSTED INTEREST CHARGE	TOTAL INTEREST FOR PERIOD
JUN	9115.01			9115.01

WE DEBIT YOUR ACCOUNT THIS AMOUNT $9115.01

STATEMENTS OF OVERDRAFT INTEREST, ANNEXED TO FOREGOING AFFIDAVIT OF ARACY TROXELL DEAN

LISTING OF
BACK VALUED ENTRIES

PERIOD OF
JUN 1,1974 - JUN 30,1974
FOR
JUNE 1974
ACCOUNT NUMBER
11928785
COUNTRY 246 PC 792

DATE OF ENTRY	BACK VALUE DATE	ENTRY AMOUNT
JUN 5	5/04/74	#7600
JUN 17	6/14/74	#30030

ok Aracy Dean

THE BACK VALUE ENTRIES LISTED ABOVE HAVE BEEN APPLIED TO THE CALCULATION OF OVERDRAFT INTEREST AS REPORTED ON THE ATTACHED "STATEMENT OF OVERDRAFT INTEREST."

* NEXT MONTH'S STATEMENT WILL BE ADJUSTED FOR THIS BACK VALUED ENTRY.

LAST MONTH'S STATEMENT WAS ADJUSTED FOR THIS BACK VALUED ENTRY.

C - CLEARING HOUSE FUNDS (AVAILABLE NEXT DAY)

STATEMENT OF ANDREAS F. LOWENFELD, DATED JUNE 4, 1974, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD.

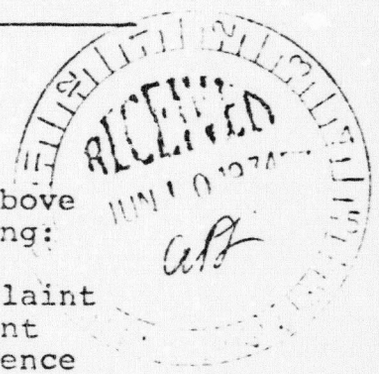
ANDREAS F. LOWENFELD
COUNSELOR AT LAW
40 WASHINGTON SQUARE SOUTH
NEW YORK, N. Y. 10012

(212) 598-2321

June 4, 1974

Consulat General de la Republique
d'Haiti
60 East 42nd Street
New York, New York 10017

Re: Aerotrade, Inc. v. Republic of Haiti
Aerotrade, Inc. v. Banque Nationale
de la Republique d'Haiti



STATEMENT

For professional services rendered in the above entitled case, October 1973 - June 1974, including:

Investigation of facts pertinent to complaint dated August 17, 1973 and Order of Attachment dated October 5, 1973, including correspondence and consultations with Mr. Serge Charles, Mr. Antonio Andre, and with other officials of the Republic of Haiti, as well as with officers and counsel of First National City Bank of New York;

Study of diplomatic correspondence between Republic of Haiti and United States Department of State, correspondence and conferences with officials of Office of Legal Adviser and Office of Caribbean Affairs, United States Department of State, and preparation of formal Plea of Sovereign Immunity to Department of State dated October 29, 1973;

Preparation of Motion to Dismiss Complaint dated November 5, 1973, together with Attorney's Affidavit, other supporting documents, and Memorandum of Law;

STATEMENT OF ANDREAS F. LOWENFELD, DATED JUNE 4, 1974, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

Preparation of Memorandum of Law dated November 20, 1974 in opposition to plaintiffs' motion for service of process in personam against Republic of Haiti;

Oral argument before Honorable Edward Weinfeld, United States District Judge, November 27, 1973 of motion to dismiss and motion for service of process;

Preparation of Supplemental Affidavit dated November 30, 1973 and accompanying documents in support of Motion to Dismiss;

Preparation of response to plaintiffs' motion concerning funds held by United States Marshal, dated December 3, 1973;

Preparation of affidavit dated January 10, 1974 together with supporting documents and Memorandum of Law in opposition to plaintiffs' motion directing attachment of funds to support separate action against Banque Nationale de la Republique d'Haiti;

Oral argument before Judge Edward Weinfeld United States District Judge of Motion directing attachment of funds to support separate action against Banque Nationale de la Republique d'Haiti, January 15, 1974;

Conference of counsel with Honorable Edward Weinfeld, United States District Judge, February 12, 1974 concerning issues on which Judge Weinfeld requested further clarification;

Correspondence and conversations with officials of Government of the Republic of Haiti and of Banque Nationale de la Republique d'Haiti and research in connection with response to requests for information raised at conference with Honorable Edward Weinfeld, and preparation of Supplemental Affidavit dated March 6, 1974 together with supporting documents and Memorandum of Law;

STATEMENT OF ANDREAS F. LOWENFELD, DATED JUNE 4, 1974, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

Telephone conferences and correspondence with officials of United States Agency for International Development concerning action by Aerotrade to compel suspension of United States foreign assistance to Republic of Haiti;

Study of judgments filed May 24, 1974 in favor of Republic of Haiti and Banque Nationale de la Republique d'Haiti;

Oral argument before Honorable Edward Weinfeld, United States District Judge, May 30, 1974, concerning plaintiffs' application for stay of judment and arrangements for increased bond pending appeal;

Preparation of Orders dated June 4, 1974 directing United States Marshal to release funds of Banque Nationale de la Republique d'Haiti attached by Order of Attachment dated October 5, 1973;

Preparation of motion and supporting papers concerning legal costs and damages to be satisfied out of bond given by Hartford Accident and Indemnity Company dated August 23, 1973.

. . . . .	$15,600.00
Disbursements (See attachment)	619.80
	$16,219.80

Received on Account

(10/10/73)	$3,000.00
(2/15/74)	3,162.03
	$6,162.03
Amount Due	10,057.77

Andreas F. Lowenfeld

STATEMENT OF ANDREAS F. LOWENFELD, DATED JUNE 4, 1974, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

ANDREAS F. LOWENFELD
COUNSELOR AT LAW
40 WASHINGTON SQUARE SOUTH
NEW YORK, N. Y. 10012

(212) 598-2321

June 4, 1974

Re: Aerotrade, Inc. v. Republic of Haiti
Aerotrade, Inc. v. Banque Nationale de la Republique d'Haiti

Statement of Disbursements

Transportation		
Travel to Washington 11/5/73	$71.23	
Miscellaneous Local	23.65	
		$94.88
Translation		
Lawyers & Merchant's Bureau (11/28/73)		80.00
Telephone		
To Port au Prince (2/26/74)	$87.00	
Miscellaneous to Washington	20.00	
		97.00
Xeroxing and Certification of Documents		35.92
Secretarial (Theresa L. Soldano)		250.00
Research Assistance (William O. Bresnick)		50.00
Miscellaneous		12.00
Total		$619.80

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD, DATED AUGUST 5, 1975.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC. AND AEROTRADE INTERNATIONAL, INC., Plaintiffs -against- REPUBLIC OF HAITI, Defendant	73 Civ. 3587 EW Before Magistrate Schreiber SUPPLEMENTAL AFFIDAVIT

County of New York)
State of New York) s.s.

ANDREAS F. LOWENFELD, being duly sworn, deposes and says:

1. I make this affidavit in support of defendant's motion under Rule 65.1 to enforce a bond given at the commencement of this action. This affidavit supplements my affidavits of December 12, 1974 and April 22, 1975. The history of the litigation to date is spelled out in my affidavit of April 22, 1975.

2. The motion by Republic of Haiti under Rule 65.1 was heard by Judge Weinfeld on February 4, 1975. Judge Weinfeld referred two questions raised by plaintiffs and the bonding company to the Magistrate:

(i) Whether there was an adequate showing of the interest charges imposed by First National City Bank as a result of the attachment; and

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD, DATED AUGUST 5, 1975

(ii) Whether said charges were in fact borne by the defendant Republic of Haiti.

I believe the first question was fully answered in the papers submitted with my affidavit of April 22, 1975, and in particular by the affidavit enclosed therewith by Mrs. Aracy Troxell Dean, Assistant Cashier at the First National City Bank of New York, International Banking Group, and the bank statements accompanying her affidavit. The purpose of this affidavit is to introduce the documentation to respond fully to the second question.

2. Shortly after the hearing before Magistrate Schreiber on May 12, 1975, I contacted a representative of the Government of the Republic of Haiti by telephone to Port-au-Prince, and advised him of the questions raised at the hearing before Magistrate Schreiber. On or about May 27, 1975, I was advised by letter and telephone that agreement had been reached between the Ministry of Finance of the Republic of Haiti and Banque Nationale de la Republique d'Haiti that the Republic would reimburse Banque Nationale for the expenses incurred by the latter by reason of the attachment of its funds in connection with the legal action against the Republic of Haiti, and that the account of the Republic of Haiti with Banque Nationale would be debited accordingly. I suggested that this agreement be reduced to writing as soon as possible for submission to the court. Thereafter, M. Antonio André, the President and General Manager of Banque Nationale and the person at the bank familiar with this case, became seriously ill and was hospitalized. (I am advised

that M. André is a diabetic and evidently had some kind of collapse.) For this reason the documentation to record the agreement was delayed. In the last week of July, 1975, M. André had recovered sufficiently (though he is still hospitalized) to complete the exchange of letters and accompanying affidavit. M. André's affidavit, dated July 29, 1975, together with the exchange of letters between him and the Secretary of State for Finance and Economic Affairs, M. Emmanuel Bros, and the debit entry made by Banque Nationale, all dated July 25, 1975, are attached hereto, together with certified translations of the papers submitted in French.

4. The affidavit of M. André and the documents accompanying it show that such expenses as Banque Nationale disbursed for the account of the Republic of Haiti in connection with this action have now been reimbursed. Accordingly, there can be no further doubt that said expenses represent "legal costs and damages sustained by the defendant Republic of Haiti by reason of the attachment;" and thus come within the undertaking given by Hartford Accident and Indemnity Company on August 23, 1973.

County of New York)
State of New York) s.s.

Sworn to before me this
5 day of August, 1975.

Martha L. Ephraim

MARTHA L. EPHRAIM
Notary Public, State of New York
No. 31-4511689
Qualified in New York County
Commission Expires March 30, 1977

Andreas F. Lowenfeld

AFFIDAVIT OF ANTONIO ANDRE, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD.

BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI

DEPARTEMENT COMMERCIAL

BANQUE DE L'ETAT HAITIEN AU CAPITAL AUTORISE DE VINGT-CINQ MILLIONS DE GOURDES

TRESORIERE DE L'ETAT ET BANQUE D'EMISSION

SUCCURSALES ET AGENCES DANS TOUS LES PORTS OUVERTS D'HAITI

ADRESSE TELEGRAPHIQUE
INSULAIRE

SIEGE SOCIAL ET BUREAU PRINCIPAL : PORT-AU-PRINCE, HAITI

PORT-AU-PRINCE, LE July 29, 1975

REFERENCE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE INC.,
and
AEROTRADE INTERNATIONAL INC.,
Plantiffs,

- against -

REPUBLIC OF HAITI
Defendant

73 CIV.3587
Judge Weinfeld

Port-au-Prince
Haiti } S.S.

ANTONIO ANDRE being duly sworn deposes and says:

1- I am President and General Manager of Banque Nationale de la République d'Haiti (hereafter BNRH). I was appointed to this position by resolution of the Conseil d'Administration on November 26, 1960; my term of office was extended on November 26, 1965 and on October 5, 1970 and continues until October 5, 1975.

In accordance with article 10 of the statutes (by-laws) and resolutions passed thereunder, I am the Chief Executive Officer of said Bank, and I am authorized to act for the Bank in all matters concerning litigation in which BNRH may be engaged or by which it may be affected.

AFFIDAVIT OF ANTONIO ANDRE, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

I have already made three affidavits in connection with this case, dated respectively October 31, 1973, March 1st 1974, and November 22, 1974 in which I have stated that the funds attached in New York are not the property of the Haitian Government but belong to Banque Nationale.

2- The purpose of this Affidavit is to certify that Banque Nationale de la République d'Haiti has received from the Haitian Government payment of the interests charged by FNCB of New York, N.Y. on overdraft of the account #10928785 held by them in the name of BNRH, overdraft resulting from the order of attachment placed by AEROTRADE. As I stated in my affidavit of November 22, 1974, the total of these interests amounts to $ 46,810,38.

3- The Finance Minister of the Republic of Haiti, M. Emmanuel Bros, acting in this official capacity for the Republic of Haiti has authorized Banque Nationale de la République d'Haiti to debit the account of the Government of Haiti et Banque Nationale de la République d'Haiti for the said amount of $ 46,810,38 representing the interest paid by Banque Nationale de la République d'Haiti to First National City Bank of New York by reason of the attachment. I enclose a copy of my letter of July 25, 1975 to the Minister of Finance and his reply thereto dated July 25, 1975 confirming the above.

REPUBLIC OF HAITI)
CITY OF PORT-AU-PRINCE)
EMBASSY OF THE UNITED) ss:
STATES OF AMERICA)

Antonio André
President and General Manager

Subscribed and sworn to before me
this 29th day of July, 1975.

WALTER S. BURKE
Consul of the United States
of America

TRANSLATION CERTIFICATION, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD.

CERTIFICATE OF ACCURACY

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

THIS IS TO CERTIFY THAT on this day, Ms. Maria Elena Cardenas personally appeared before me, a Notary Public, in and for the aforesaid State and County. That after being duly sworn, deposed and said:

"THAT she is a translator of the FRENCH and English languages.

THAT she is thoroughly conversant with these languages and has translated them for more than ten years.

THAT she has carefully compared the attached English translation of the annexed original documents written in the FRENCH language.

THAT said translation is an accurate and true translation of such original documents and of the whole thereof."

LS María Elena Cárdenas
MARIA ELENA CARDENAS

Sworn to and subscribed before me, this 5 day of the month of August 1975.

Martha L. Ephraim
NOTARY PUBLIC

MARTHA I. EPHRAIM
Notary Public, State of New York
No. 31-4511680
Qualified in New York County
Commission Expires March 30, 1976

LETTER, DATED JULY 25, 1975, AND TRANSLATION THEREOF, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD.

25 Juillet 1975

Mr. Antonio André
Président Directeur Général
Banque Nationale

Monsieur le Président Directeur Général,

Nous vous accusons réception de votre lettre du 25 Juillet 1975 nous remettant votre avis de débit de Gdes ... 234,051,90 représentant les intérêts qui vous ont été débités par la First National City Bank, New York, par suite du découvert créé par la saisie pratiquée par la firme AEROTRADE sur les fonds de la Banque Nationale de la République d'Haiti. Ces intérêts couvrent la période du 21 Septembre 1973 au 11 Juin 1974.

Comme demandé, nous vous donnons par la présente notre plein accord pour votre action.

Nous estimons, si ce n'est déjà fait, que vous passerez des instructions à votre avocat chargé du cas à l'extérieur, pour que cette valeur soit récupérée de la AEROTRADE.

En vous demandant de bien vouloir nous tenir au courant du suivi, nous vous prions d'agréer, Monsieur le Président Directeur Général, l'assurance de notre haute considération.

Emmanuel Bros
Secrétaire d'Etat

LETTER, DATED JULY 25, 1975, AND TRANSLATION THEREOF, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

TRANSLATION FROM FRENCH INTO ENGLISH 8/4/75

July 25, 1975

Mr. Antonio André
President and Chief Officer
Banque Nationale

Dear Mr. President and Chief Officer:

We are in receipt of your letter of July 25, 1975 in which you enclose the Debit Notice in the amount of G.234,051.90 covering the interest charges debited to you by the First National City Bank, New York following the overdraft created by the lien of the AEROTRADE firm on the monies of the Republic of Haiti National Bank. These charges cover the period of September 21, 1973 to June 11, 1974.

As defendant, we give you our full support for the action taken.

It is our estimation, if you have not as yet done so, that you should give instructions yo your attorney in charge abroad to try to get back this money from AEROTRADE.

We are likewise asking you to keep us posted concerning this matter, and Mr. President and Chief Officer, we send you every assurance of our highest consideration.

(Signed:Illegibly)

Emmanuel Bros
Secretary of State

LETTER, DATED JULY 25, 1975, AND TRANSLATION THEREOF, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD.

25 Juillet 1975

AEROTRADE

Monsieur le Secrétaire d'Etat,

Un contrôle de nos livres a révélé que les intérêts chargés par la First National City Bank, New York, sur les découverts de notre compte chez eux, causés par la saisie pratiquée par la AEROTRADE, entre le 21 Septembr 1973 et le 11 Juin 1974, s'élevant à $ 46,010,38, n'avaient pas encore été remboursés par l'Etat Haitien à la BNRH.

Nous avons fait la régularisation nécessaire en débitant votre compte chez nous pour le montant susdit, apport avis de débit annexé à la présente.

Nous avons l'honneur de vous demander de bien vouloir confirmer notre action, et vous prions d'agréer, Monsieur le Secrétaire d'Etat, l'expression de notre haute considération.

Antonio André
Président Directeur Général

S.E. Emmanuel Bros
Secrétaire d'Etat des Finances &
des Affaires Economiques
En ses Bureaux.-

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LETTER, DATED JULY 25, 1975, AND TRANSLATION THEREOF, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

3 (8-74)

BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI

DEPARTEMENT COMMERCIAL — PORT-AU-PRINCE

Date : 25 Juillet 1975

:

GVT. D'HAITI COMPTE DE DEPENSES

DEBIT

vous avisons avoir débité ce jour votre Autres Dép.de Fonctionnement compte Comme suit :

	Gourdes
Intérets réclamés par la F.N.C.B.,NY sur découvert causé par saisie Aérotrade sur fonds BNRH entre Septembre 1973 et Juin 1974:046.810.38	6.234.051.90

(DEUX CENT TRENTE QUATRE MILLE CINQUANTE ET UNE GOURDES & 90/100)

au

réception de cet avis veuillez passer les écritures si cela n'a pas été déjà fait.

LETTER, DATED JULY 25, 1975, AND TRANSLATION THEREOF, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

TRANSLATION FROM FRENCH INTO ENGLISH **8/4/75**

July 25, 1975

AEROTRADE

Mister Secretary of State:

After consulting our records, we find that the interest charged by the First National City Bank, New York upon the overdraft of our account with that institution, brought about by the lien of AEROTRADE Between September 21, 1973 and June 11, 1974 was $ 46,810.38 and has not been reimbursed to the Republic of Haiti National Bank by the Government of Haiti.

We have followed the proper measures in order to debit your account with us of the abovementioned amount; the debit notice is herein attached.

We have the honor of asking you to kindly confirm our action, and send you, Mister Secretary of State, the highest expression of our consideration.

(Signed: Illegibly)

ANTONIO ANDRE
President and Chief Officer

H.E. Emmanuel Bros
Secretary of State for Finance and Economic Affairs
At HIs Office.-

LETTER, DATED JULY 25, 1975, AND TRANSLATION THEREOF, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

TRANSLATION FROM FRENCH INTO ENGLISH 8/4/75

NATIONAL BANK OF THE REPUBLIC OF HAITI

Commercial Department Port-au-Prince

Date: July 25, 1975

GOVERNMENT OF HAITI - EXPENSE ACCOUNT D E B I T
NOTICE

We are advising having debited your
Other Managing Departments ACCOUNT
as follows:

GOURDES

Interest charges by First National City Bank, New York, on overdraft due to lien of AEROTRADE on the funds of the REPUBLIC OF HAITI NATIONAL BANK between September 1973 and June 1974: $46,810.38

G. 234,051.90

(Two hundred and thirty-four thousand and fifty-one Gourdes and 90/100)

Upon receipt of this notice please pass along if it has not as yet been done.

(Illegible Signature) (Illegible Signature)

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD, DATED NOVEMBER 19, 1975.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC. AND AEROTRADE INTERNATIONAL, INC.,	
Plaintiffs,	73 Civ. 3587
-against-	Before Magistrate Schreiber
REPUBLIC OF HAITI,	
Defendant.	Supplemental Affidavit

State of New York)
County of New York) ss.:

ANDREAS F. LOWENFELD being duly sworn deposes and says:

1. I am the attorney for the Republic of Haiti, defendant in this case. I make this affidavit in support of defendant's motion under Rule 65.1 to enforce a bond given at the commencement of this action. This affidavit supplements my earlier affidavits of December 22, 1974, April 22, 1975, and August 5, 1975.

2. At the hearing before the Magistrate on October 2, 1975, counsel for plaintiffs challenged the Statement of Attorney's Fees and Expenses submitted by me in connection with the motion to collect on the bond. Among the reasons given for this challenge was the assertion that in submitting my Statement of Services for the period October 1973 - June 1974, I had not set forth with sufficient specificity the basis on which the

fees were computed. The purpose for this affidavit is to fill in such gap as there may be in explanation of my fee.

3. With respect to my qualifications, I am Professor of Law at New York University School of Law, where I teach among other subjects International Law, Civil Procedure, Conflict of Laws, and International Economic Transactions, all of which were relevant to the principal action. I have written widely in the field of international law, including specifically on the subject of immunity of foreign sovereigns involved in this case. Prior to my coming to New York University School of Law, I was Deputy Legal Adviser in the United States Department of State, in which capacity I was, inter alia, substantially involved in sovereign immunity cases coming before the Department of State. I have served as expert witness on international law questions in numerous cases before this and other courts in the United States and abroad. Attached hereto is a curriculum vitae that summarizes my experience as lawyer, government official and professor and contains a list of my publications.

4. My Statement of June 4, 1974, was based on a total of 260 hours of services, at the rate of $60 per hour for a fee of $15,600, plus disbursements of $619.80 shown separately. All of the work reflected in the statement was performed by me, without the use of partners or associates. I have attempted to the best of my ability to reconstruct the number of hours reflected in the separate paragraphs of the statement; the

SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD,
DATED NOVEMBER 19, 1975

resulting estimates are shown in the left hand margin of the statement.* In all other respects the document attached hereto is the same as the document attached to my Affidavit of April 22, 1975 -- in both instances a xerox copy of the original as submitted to the Republic of Haiti.

Andreas F. Lowenfeld

State of New York)
County of New York) ss.:

Sworn to before me this

19 day of November 1975.

Martha L. Ephraim

Notary [illegible]
[illegible] 11689
Qualified in New York County
Commission Expires March 30, 1977

*The last item shown, concerning the motion to collect on the bond, reflects my estimate as of June 4, 1974, which, of course, proved quite erroneous.

CURRICULUM VITAE, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD.

ANDREAS F. LOWENFELD
Professor of Law, New York University School of Law

CURRICULUM VITAE

A. B. Harvard College (M.c.L.) 1951
LL.B. Harvard Law School (M.c.L.) 1955

Practised law with Hyde and de Vries, New York 1957-61.

U.S. Dept. of State (1961-1966) - Special Assistant to Legal Adviser 1961-1963; Assistant Legal Adviser for Economic Affairs 1963-65; Deputy Legal Adviser 1965-66.

Fellow, John F. Kennedy Institute of Politics, Harvard University, 1966-67.

Professor of Law, New York University School of Law since 1967.
Visiting Professor, Stanford University Law School - Summer 1969, Summer 1972.
Lecturer on International Law, U.S. Foreign Service Institute - Summer 1973.
Professor, Salzburg Seminar in American Studies -- Summer 1974.

Courses: International Law and Institutions
International Economic Transactions
Regulation of American Business Abroad
Conflict of Laws
Aviation Law
Civil Procedure

Member: Association of Bar, City of New York
Committee on Foreign and Comparative Law
Aeronautics Committee

American Bar Association
Section of International Law

American Society of International Law
Member: Panel on International Monetary Reform
Committee on International Trade Regulation
Panel on International Trade Policy

Council on Foreign Relations
Member: Panel on Foreign Economic Policy
Trade Issues Review Group
Chairman, International Civil Aviation Policy Study Group

American Arbitration Association
Member: Panel on Commercial and International Arbitration
Arbitration Law Committee, Commercial Section and International Law Section

CURRICULUM VITAE, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

List of Publications

BOOKS

International Legal Process (with Abram Chayes and Thomas Ehrlich)(Boston, Little Brown (1968-9)).

Expropriation in the Americas: A Comparative Law Study (Editor and part author) (New York, Dunellen (1971)).

Aviation Law, Cases and Materials (New York, Matthew Bender (1972) Supplement 1974).

International Economic Law -- (New York, Matthew Bender 1975 --)
Part I: International Private Trade (Sept. 1975)
Part II: International Private Investment (forthcoming)
Succeeding parts in preparation.

PUBLIC INTERNATIONAL LAW

Articles

"How the European Economic Community is Organized," 19 The Business Lawyer 126 (1963) (also 49 Dep't State Bull. 372 (1963).

"The Sabbatino Amendment - International Law Meets Civil Procedure," 59 Am. J. Int'l L. 699 (1965).

"Diplomatic Intervention in Investment Disputes," 1967 Proceedings of the American Society of International Law 96.

"On Teaching International Law," 1 N.Y.U. J. of Int'l L. & Pol. 61 (1968).

"Claims Against Foreign States - A Proposal for Reform of United States Law," 44 N.Y.U. L. Rev. 901 (1969).

"First National City Bank v. Banco Nacional de Cuba: Act of State and Department of State," 66 Amer. J. Int'l L. 795 (1972).

"Reflections on Expropriation and the Future of Investments in the Americas," 6 Int'l Lawyer 116 (Jan. 1973).

"Litigating A Sovereign Immunity Claim - The Haiti Case," 49 N.Y.U. L. Rev. 377 (1974).

Book Reviews

H. de Vries & J. Rodriguez-Novas, The Law of the Americas, 66 Colum. L. Rev. 822 (1966).

L. C. Green, International Law Through the Cases, 65 Am. J. Int'l L. 837 (1971).

CURRICULUM VITAE, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

INTERNATIONAL ECONOMIC LAW

Articles

"International Commodity Controls - Some Lessons from the Coffee Agreement," 61 Am. J. Int'l Law 784 (1967).

"'To Have One's Cake . . .' The Federal Maritime Commission and The Conferences," 1 J. Mar. L. & Com. 21 (1969).

"U.S. and Soviets: East-West Trade in a New Setting," N.Y. Law Journal, March 26, 1973.

"Opening to the East," New York Times Week in Review, April 15, 1973.

"'Doing Unto Others . . .' The Chicken War Ten Years After," 4 J. Mar. L. & Com. 599 (July 1973).

"The Chicken War: A Postscript," 5 J. Mar. L. & Com. 317 (1974).

"Should Investment Capital Remain at Home -- Toward a New Approach to the Wandering Enterprise," 1974 Proceedings, Amer. Soc. Int'l Law 27 (1975).

Book Reviews

S. Metzger, International Law, Trade and Finance, Realities and Prospects.
77 Harv. L. Rev. 388 (Dec. 1963).

L. Ebb, International Business: Regulation and Protection.
78 Harv. L. Rev. 1699 (June 1966).

K. Dam, The GATT: Law and International Economic Organization,
J. H. Jackson, World Trade and the Law of the GATT.

S. Pisar, Coexistence and Commerce: Guidelines for Transactions Between East and West.
84 Harv. L. Rev. 1964 (1971).

B. Fisher, The International Coffee Agreement: A Study in Coffee Diplomacy.
5 L. & Pol. Int'l Bus., 347 (Jan. 1973).

J. Gold, Membership and Nonmembership in the International Monetary Fund.
16 Va. J. Int'l L. (forthcoming).

CURRICULUM VITAE, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

AVIATION LAW

Articles

"The United States and the Warsaw Convention," 54 Dep't State Bull. 580 (1966).

"The Warsaw Convention and the Washington Compromise, A View from America," 70 Journal of the Royal Aeronautical Society 1061 (Dec. 1966).

"The United States and the Warsaw Convention," 80 Harv. L. Rev. 407 (with Allan I. Mendelsohn) (1967).

"Some Reflections on the Montreal Agreement of 1966," 33 Air L. & Com. 542 (1967).

"Some Comments on Burdell v. Canadian Pacific Airlines," 3 Vanderbilt Int'l 47 (1969).

"International Control of Aerial Hijacking, A Comment," 65 Am. J. Int'l L. 86 (1971).

"Hijacking, Warsaw, and the Problem of Psychic Trauma," 1 Syracuse J. Int'l L. & Com. 345 (1973).

"A New Takeoff for International Air Transport," 54 Foreign Affairs 36 (October 1975).

"CAB v. KLM -- Bermuda at Bay," 1 Air Law (The Netherlands) No.1 (1975).

Book Reviews

C. Shawcross and K. Beaumont, Air Law, 3rd ed. 8 Harv. Int'l L. Journal 408 (1967).

E. McWhinney & M. Bradley, eds., The Freedom of the Air, 15 McGill L. J. 510 (1969).

J. Hildebrand, ed., Noise Pollution and the Law, 37 J. Air L. & Com. 415 (1971).

N. Aggarwala, M. J. Fenello, C. F. Fitzgerald, Air Hijacking: An International Perspective, 5 N.Y.U. J. Int'l L. & Pol. 419 (1972).

J. Dutheil de la Rochère, La Politique des Etats-Unis en Matiere d'Aviation Civile Internationale, 21 Am. J. Comp. L. 165 (1973).

CURRICULUM VITAE, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

PRIVATE INTERNATIONAL LAW AND CONFLICT OF LAWS

Materials

Conflict of Laws - Supplmental Materials with Emphasis on International Problems (417 pages, bound, not published (1975)).

Articles

"Jurisdiction in Personal Actions -- A Comparison of Civil Law Views," 44 Iowa L. Rev. 306 (1959). (with Henry P. de Vries).

"'Tempura Mutantur ...' -- Wills and Trusts in the Conflicts Restatement," 72 Colum. L. Rev. 382 (1972).

HISTORY AND POLITICS

Books and Articles

"The Free Germany Committee -- An Historical Study" 14 Rev. Politics 346 (1952).

The European Satellites, M.I.T. Center for International Studies (editor and part author) (1952).

W. W. Rostow et al: The Dynamics of Soviet Society, 1953, 1954 (contributor).

Reviews

H. Einsiedel, I Joined the Russians, 15 Rev. Politics 393 (1953).

J. Wheeler-Bennett. The Nemesis of Power: The German Army in Politics, 1918-1945
The New Leader, Feb. 15, 1954

CONSTITUTIONAL LAW

Reviews

L. Henkin, Foreign Affairs and the Constitution
87 Harv. L. Rev. 494 (Dec. 1973)

STATEMENT, DATED JUNE 4, 1974, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD.

ANDREAS F. LOWENFELD
COUNSELOR AT LAW
40 WASHINGTON SQUARE SOUTH
NEW YORK, N. Y. 10012

(212) 598-2321

June 4, 1974

Consulat General de la Republique
d'Haiti
60 East 42nd Street
New York, New York 10017

Re: Aerotrade, Inc. v. Republic of Haiti
Aerotrade, Inc. v. Banque Nationale
de la Republique d'Haiti

STATEMENT

For professional services rendered in the above entitled case, October 1973 - June 1974, including:

22 Investigation of facts pertinent to complaint dated August 17, 1973 and Order of Attachment dated October 5, 1973, including correspondence and consultations with Mr. Serge Charles, Mr. Antonio Andre, and with other officials of the Republic of Haiti, as well as with officers and counsel of First National City Bank of New York;

30 Study of diplomatic correspondence between Republic of Haiti and United States Department of State, correspondence and conferences with officials of Office of Legal Adviser and Office of Caribbean Affairs, United States Department of State, and preparation of formal Plea of Sovereign Immunity to Department of State dated October 29, 1973;

52 Preparation of Motion to Dismiss Complaint dated November 5, 1973, together with Attorney's Affidavit, other supporting documents, and Memorandum of Law;

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STATEMENT, DATED JUNE 4, 1974, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

19	Preparation of Memorandum of Law dated November 20, 1974 in opposition to plaintiffs' motion for service of process in personam against Republic of Haiti;
8	Oral argument before Honorable Edward Weinfeld, United States District Judge, November 27, 1973 of motion to dismiss and motion for service of process;
20	Preparation of Supplemental Affidavit dated November 30, 1973 and accompanying documents in support of Motion to Dismiss;
5	Preparation of response to plaintiffs' motion concerning funds held by United States Marshal, dated December 3, 1973;
27	Preparation of affidavit dated January 10, 1974 together with supporting documents and Memorandum of Law in opposition to plaintiffs' motion directing attachment of funds to support separate action against Banque Nationale de la Republique d'Haiti;
5	Oral argument before Judge Edward Weinfeld United States District Judge of Motion directing attachment of funds to support separate action against Banque Nationale de la Republique d'Haiti, January 15, 1974;
4	Conference of counsel with Honorable Edward Weinfeld, United States District Judge, February 12, 1974 concerning issues on which Judge Weinfeld requested further clarification;
44	Correspondence and conversations with officials of Government of the Republic of Haiti and of Banque Nationale de la Republique d'Haiti and research in connection with response to requests for information raised at conference with Honorable Edward Weinfeld, and preparation of Supplemental Affidavit dated March 6, 1974 together with supporting documents and Memorandum of Law;

ab

STATEMENT, DATED JUNE 4, 1974, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF ANDREAS F. LOWENFELD

3	Telephone conferences and correspondence with officials of United States Agency for International Development concerning action by Aerotrade to compel suspension of United States foreign assistance to Republic of Haiti;	
3	Study of judgments filed May 24, 1974 in favor of Republic of Haiti and Banque Nationale de la Republique d'Haiti;	
8	Oral argument before Honorable Edward Weinfeld, United States District Judge, May 30, 1974, concerning plaintiffs' application for stay of judment and arrangements for increased bond pending appeal;	
2	Preparation of Orders dated June 4, 1974 directing United States Marshal to release funds of Banque Nationale de la Republique d'Haiti attached by Order of Attachment dated October 5, 1973;	
8*	Preparation of motion and supporting papers concerning legal costs and damages to be satisfied out of bond given by Hartford Accident and Indemnity Company dated August 23, 1973.	
	. . . . . :	$15,600.00
	Disbursements (See attachment)	619.80
		$16,219.80

260
aff
11/19/75

Received on Account

(10/10/73)	$3,000.00	
(2/15/74)	3,162.03	
	$6,162.03	
Amount Due		10,057.77

Andreas F. Lowenfeld
Andreas F. Lowenfeld

* See note to Affidavit.

MINUTES OF EVIDENTIARY HEARING BEFORE MAGISTRATE
SOL SCHREIBER, JANUARY 20, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

AEROTRADE, INC. and AEROTRADE INTERNATIONAL, INC.,

Plaintiffs,

-against-

73 Civ. 3587
Judge Weinfeld

REPUBLIC OF HAITI,

Defendants.

----------X

United States District Court
Southern District of New York
Foley Square
New York, New York

January 20, 1976 - 11:00 a.m.

B E F O R E:

MAGISTRATE SOL SCHREIBER

BORAK REPORTING SERVICE, P.C.
CERTIFIED SHORTHAND REPORTERS
295 MADISON AVENUE
NEW YORK, N.Y. 10017

(212) 689-8080
NIGHT PHONES: (212) 475-1347
(516) 487-6474

A P P E A R A N C E S :

REGAN, GOLDFARB, HELLER, WETZLER & QUINN, ESQS.
Attorneys for Plaintiffs
445 Park Avenue
New York, New York
BY: ROBERT ARONSON, ESQ.
of Counsel

ANDREAS F. LOWENFELD, ESQ.
Attorney for Defendants
New York University
40 Washington Square South
New York, New York 10012

HENDLER & MURRAY, ESQS.
Attorneys for Hartford Accident
& Indemnity Co.
15 Park Row
New York, New York
BY: JEROME MURRAY, ESQ.,
and
JASON WALLACH, ESQ.
of Counsel

oOo

THE COURT: May I have the appearance for the Republic of Haiti?

MR. LOWENFELD: Andreas F. Lowenfeld.

THE COURT: And for Aerotrade?

MR. ARONSON: Robert Aronson.

THE COURT: And for Hendler & Murray?

MR. MURRAY: Jerome Murray and Jason Wallach.

THE COURT: This hearing has been called to take testimony and for me to make a recommendation and report to Judge Weinfeld of this court. The Judge's direction is set forth on the back of the notice's motion which was filed in this Court on December 13, 1974.

It read as follows: February 4, 1975, Case respectfully referred to Magistrate S[illegible]eiber for a hearing and testimony to determine damages So ordered, signed Edward Weinfeld, U.S. District Judge.

Since that referral there have been a number of informal conferences before me and papers have been submitted to me concerning the outstanding issues.

Mr. Lowenfeld, are you prepared to go forward now?

MR. LOWENFELD: I am, sir.

THE COURT: Do you wish to make an introduction?

MR. LOWENFELD: Very briefly, your Honor,

as I see it there are three issues left after some of the other issues have been disposed of. One has to do with my fees. I don't have in mind testifying but I submitted, as you know, an affidavit on that. I am available if Aerotrade or the insurance company wants to call me to talk about them.

Second is the question of how the interest charges were prepared and I have here Mrs. Aracy Troxell Dean, the assistant cashier of the First National City Bank who will explain how these charges were concluded. I plan to call her first.

Third is the question of who pays the interest charges as between Banque Nationale and the Republic of Haiti and I have as a witness Mr. Serge Elie Charles of the Republic of Haiti Foreign Ministry and he will testify.

THE COURT: Do any of the counsel dispute the issues as they have been raised by Professor Lowenfeld? Is there any objection in my calling him "a professor"? I could just as easily call him "Mister."

MR. ARONSON: No objection, your Honor.

MR. MURRAY: I think it is unusual for a member of the Bar appearing as a member of the Bar and not as a professor being accorded a title, even though I respect him for it.

THE COURT: If I called you Doctor, would you respect him for it? I assume you have a Doctor of Law.

MR. MURRAY: Yes, I have. I have no objection to your calling him Professor; it is not a jury case.

THE COURT: With regard to the issues as Mr. Lowenfeld has presented them --

MR. ARONSON: I agree with the manner in which he has characterized them.

MR. MURRAY: I think the issues that he has raised, of course, have to be proven by him but there is another issue and that is the extent of the liability of the insurance, at this time, on a statutory undertaking that was filed in connection with this case and I think the wording of this undertaking is quite specific and the law on the obligation of the surety is just as specific.

THE COURT: How do you look upon that issue? What language are you suggesting raises that point?

MR. MURRAY: The undertaking itself, your Honor.

THE COURT: Yes, I have it before me, obviously, but I want you in more detail to set forth what the issue is with regard to the undertaking.

MR. MURRAY: There is no question in this case but that legal fees are an item of damage. Professor Lowenfeld has already advised the Court that he has been paid his legal fees by the Republic of Haiti in the amount specified, approximately $16,000. The Republic of Haiti is presently seeking to recover back from the defendant surety on its undertaking the amount that it paid to Professor Lowenfeld. The amount that the Republic paid to the Professor is not determinative of the issues. Your Honor must determine the fair and reasonable value of such attorney fees and I think it is an issue and rightly so stated by the Professor.

THE COURT: I understand your point that whether or not the amounts paid were fair and reasonable for the work performed --

MR. MURRAY: And the other items of damage

that are alleged. I respectfully submit that the proof must satisfy your Honor that this is another valid observation on the part of the surety and we can attest it is.

THE COURT: That the Republic --

MR. MURRAY: That these are damages coverable under our undertaking.

THE COURT: If the Republic of Haiti actually incurred such damages, why would they not fit within the bond signed by the Hartford Insurance which says that all legal costs and damages which may be sustained by an attachment --

MR. MURRAY: Firstly, we must presume that the plaintiff is not going to pay these damages before the liability of the surety becomes fixed. Our liability has been not determined yet. We have no obligation to make any payment until a Court makes a determination of what we owe.

The damages proven in this case must subsequently flow from the attachment and the necessity of the Government to defend this suit. The Government is affirmatively speaking monetary damages in this special proceeding. It must establish --

THE COURT: Mr. Murray, if they incurred expenses arising out of the attachment in the original case, is there any question in your mind that if those are reasonable expenses incurred by them that they would not fit the damage clause of the bond?

MR. MURRAY: Certainly; there is a great question in my mind as to whether or not Hartford can be legally compelled to pay any sum that the Republic of Haiti determined in its mind it might incur as damages in this case.

THE COURT: I am not saying what the Republic of Haiti believed in its mind but if the Court finds that the Republic of Haiti had damages arising out of the attachment, is there any question if such a finding is made it would fit the bond?

MR. MURRAY: No question at all in the way your Honor formed the question.

THE COURT: I have before me a supplemental affidavit sworn to by Mr. Lowenfeld, of November 19, 1975 which sets forth his qualifications and his statement for services rendered in connection with the matter as well as a curriculum vitae and

a statement containing hours spent. Does anyone have any objection in this affidavit being submitted in evidence as the testimony that Mr. Lowenfeld would give on this issue, preserving your right, of course, to cross-examine him on the matter.

MR. ARONSON: I have no objection, your Honor.

MR. MURRAY: No objection on my part.

THE COURT: So the supplemental affidavit, those portions dealing with Mr. Lowenfeld's qualifications, his curriculum vitae and his statement for services rendered will be deemed marked in evidence as Defendant Haiti's Exhibit No. 1.

(The document above referred to was deemed marked in evidence, Defendant Haiti's Exhibit No. 1, this date.)

I will speak to you first, Mr. Aronson. This is a sworn testimony. Do you wish to examine Mr. Lowenfeld on this matter?

MR. ARONSON: Yes.

THE COURT: And you, Mr. Murray?

MR. MURRAY: I don't require him to be sworn

as a witness, your Honor, but if Mr. Aronson doesn't cover the few questions I have to put to Professor Lowenfeld about his bill, then I may want to.

THE COURT: I will let you determine the manner in which you want to put the testimony in. Do you want to begin with yourself being sworn as a witness, Mr. Lowenfeld, and being examined by Mr. Aronson or do you wish to put in the testimony of the National City Bank or the Republic of Haiti?

MR. LOWENFELD: I think I would like to put in the testimony of Mrs. Dean first so she can get back.

MR. ARONSON: In connection with the issues that were presented or characterized by Mr. Lowenfeld, it was my understanding that this hearing would only deal with factual issues and any over and above the factual issues presented here I think were already presented in the brief.

THE COURT: What other issues are there other than these issues that Mr. Lowenfeld has now spoken of?

MR. ARONSON: Whether Mr. Lowenfeld would

be entitled to get any attorneys' fees or damages for services he rendered after June 4th.

THE COURT: I think that is not before the Court. He is only making claim for fees prior to that date.

MR. LOWENFELD: That is right.

THE COURT: Why don't you look through the papers at a recess?

MR. MURRAY: May I just interrupt for a minute?

The bill and affidavit of Professor Lowenfeld, which was marked as Exhibit 1, the last item consisting of eight hours of time was devoted, according to the affidavit, to the preparation of the motion that led to this hearing and not in connection with the determination of the initial action.

THE COURT: All right; that will be taken into consideration.

MR. ARONSON: One further point, your Honor, previously Mr. Lowenfeld also submitted, on June 4th to Haiti, submitted a copy to the Court of his disbursements in connection with the hours he expended. I don't believe that is

attached to the affidavit marked as Defendants' Exhibit 1, but we will stipulate it can also be included.

THE COURT: You mean the matter dealing with the disbursements?

MR. ARONSON: Yes.

(Discussion off the record.)

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A R A C Y T R O X E L L D E A N, having first been duly sworn by Magistrate Schreiber, was examined and testified as follows:

EXAMINATION BY

THE COURT:

Q Will you please state your full name?

A Aracy Troxell Dean.

Q Would you prefer testifying standing or sitting?

A It doesn't matter.

THE COURT: There is a seat for you.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. LOWENFELD:

Q You have already given your name. Would

you state your occupation, please?

A I am an officer at the First National City Bank.

Q You are assistant cashier or is that no longer correct?

A I was just promoted to assistant vice president.

Q But you were assistant cashier when you prepared the affidavit?

A I was.

Q Were you, at the time that you prepared the affidavit, in the International Department of First National City Bank?

A Yes.

Q And was one of your duties to look after the account of Banque Nationale de la Republique d'Haiti?

A Yes.

Q In connection with that assignment of yours, were you asked to prepare an accounting of the charges attributable to the attachment of funds in this case?

A Yes.

Q Did you make such an accounting?

A Yes.

Q Is the accounting dated 18 March, 1975, which has been submitted to this Court, your affidavit?

A Yes.

THE COURT: Is that the affidavit that is attached to the papers of the motion before --

MR. LOWENFELD: Your Honor, it is attached to my affidavit of 22 April.

THE COURT: And the affidavit you speak of is an affidavit which is in the supplemental affidavit that you submitted to this Court and which Mrs. Dean swore to on the 18th of March, 1975?

MR. LOWENFELD: That is correct.

THE COURT: Gentlemen, do you each have a copy of that?

MR. ARONSON: Yes, your Honor.

Q I wonder if you would just briefly explain how it was that you arrived at the charges and calculations that you summarized in your affidavit?

A I took the amount of the attachment, the amount that we segregated from the Banque Nationale account. I looked at the overdraft interest statement which the client is sent on a monthly basis. There is a total of overdraft interest charged each month on the negative balance in the account.

I subtracted from that total amount any overdraft

interest charges that were not related to the actual attachment and to the amount segregated from the account. I deducted that from the total overdraft interest. The remaining overdraft interest was therefore directly related to the amount the bank segregated from the account in relation to this attachment.

THE COURT: How much was that amount?

THE WITNESS: $1,082,750.

Q Let me ask you, this accounting was submitted, I understand, to Banque Nationale officials?

A Yes.

Q And particularly to Mr. Andre who was the person you deal with?

A Yes.

Q Was there any objection on his part?

A No.

Q The charges were actually debited to the account of Banque Nationale?

A Yes, they were.

Q So that they have been paid?

A Yes.

EXAMINATION BY

THE COURT:

Q Mrs. Dean, what is the exact amount of

interest charges attributable to the attachment? What did you find to be the amount?

A The total amount was $46,810.38.

Q And you say that this $46,000 was debited to the account without objection and communicated to Mr. Andre?

A Yes.

THE COURT: Any further questions?

MR. LOWENFELD: I don't have any further questions.

THE COURT: I will start cross-examination with Mr. Aronson.

CROSS EXAMINATION

BY MR. ARONSON:

Q When did Banque Nationale pay the charges on the overdraft?

A They are charged automatically to their account on the monthly basis.

Q On what date was the $46,810.38 totally paid by Banque Nationale?

A $46,810.38 represents the interest attributable to this amount over the period September to June. Part of it was charged each month from September through June as per the schedule in the affidavit.

Q As of what date was the total amount charged or paid by Banque Nationale?

A As per the end of June.

Q The end of June?

A Yes.

Q Can you be more specific?

A No, because I can't use the statement in front of me to know exactly what date the overdraft interest for June was debited to the account.

Q In computing the interest charge attributable to the attachment, you stated there was a segregated amount that you utlized. Is that figure $1,083,750?

A $1,083,750; no cents.

Q How did you compute that amount?

A The amount was advised to me by another department in the bank and I did not compute it. I was told to segregate it but, as per the affidavit, it represents the amount of the attachment through other funds that the bank had to segregate.

Q How much money was turned over to the Marshall?

A $867,000.

Q So $216,750 was not turned over to the Marshall?

A I believe that is correct.

Q Nevertheless, you used that two hundred thousand dollar figure in the interest?

A Right.

Q And that two hundred thousand dollars never left First National City Bank, it was never segregated?

A I don't believe so.

Q In the event that you had computed the interest charges on the basis of $867,000, do you know what the total amount of the interest charges attributable to the attachment would have been?

A No.

BY THE COURT:

Q Would it have been a proportion of the total amount? If $46,810 is the amount chargeable to $1,083,750, could you arrive at what the charges would be approximately on $867,000 by taking a ratio of what was charged against a higher figure in determining what would be the lower figure?

A I think so.

Q Does the interest charge go up here as the amount increases or is it a percentage?

A It is a percentage.

Q What is the percentage charged, approximately?

A It differed every month.

Q But it doesn't differ as to the amount; it differs as to the rate?

A Yes.

BY MR. ARONSON:

Q You indicated it would be a ratio, is that right, in response to Magistrate Schreiber's question?

A I'm not sure.

Q You are not sure?

A Yes.

Q It would have to be computed separately?

A I would prefer doing that.

Q Who determined what interest rate would be charged on these overdrafts?

A We have an overdraft interest department that determines.

Q Is it indicated in your affidavit what interest charges were specifically with respect to each overdraft?

A Specifically the interest rate is noted on each overdraft interest statement for each month. It is up to

our bank to decide how much we are going to charge our clients.

Q That is the individual rate of First National City Bank?

A It is our rate for Banque Nationale.

e #2 Q Do other banks throughout the country have the same interest rates?

A I don't know.

Q Do they vary?

A It is up to each bank to decide what they want to charge.

BY THE COURT:

Q What is the legal rate of interest on such an overcharge? What is the most that could be charged by the bank?

A I don't know because I am not sure, as a corporation, I am not sure if there is even a legal charge.

I don't think the regular usury rate obviously applies here.

BY MR. ARONSON:

Q You don't know whether the interest rates throughout the country vary; is that correct?

A I am sure every bank has a different policy and I only know what our policy is.

Q You think every bank has a different interest rate?

A Yes.

BY THE COURT:

Q Can you determine for us what the interest rate was at the time?

A For each month would you like me to tell you?

Q Yes.

A (Referring.) For September it was an interest rate of 11-1/4 percent; October it was 11 percent; November 11-1/4 December 11-1/4; January 11-1/4; February 11-1/4 for part of the month and 10-1/2 another part; March 10-1/4; April 11-1/2; May 12-3/4; June 12-3/4.

MR. ARONSON: I have no further questions.

THE COURT: May I ask another question.

Q What was the $216,750 which was not segregated from the $867,000? You took a total of $1,083,750, upon which you imposed the interest charge, but you testified, I believe, that the amount segregated for the attachment was $867,000.

What does the $216,750 represent?

A These additional funds segregated by our bank represent a cover for probable interest costs and Marshalls' fees and expenses on the attachment.

THE COURT: Please read the answer.

(The answer was read.)

CROSS EXAMINATION

BY MR. MURRAY:

Q Mrs. Dean, the order of attachment with which the bank complied specified a certain sum of money to be turned over to the Marshall.

A I believe so.

Q How much was that?

A I am not sure. I did not see that.

Q The bank did comply with this order and did turn over the certain sum of money to the Marshall?

A That is correct.

Q Can you tell us when the bank turned over any money to the Marshall? Let me help you.

A I am not sure.

Q Let me refer you to a letter, First National City Bank, October 24, 1974, George J. Clark, attached to the initial motion papers of the defendants in this case.

Would you like to look at this letter from

Mr. Clark?

THE COURT: May we mark it for identification and see if the witness can identify it. We will mark it Hartford Exhibit A-1.

(The document above referred to was marked Hartford Exhibit A-1 for identification, this date.)

THE COURT: Would you look at a copy of a letter, Hartford Exhibit A-1.

A (Referring.) The funds were turned over on October 31, 1973.

Q So First National City Bank had these funds to its own credit from the date of the service of the order of this Court till it turned it over to the Marshall; is that correct?

A Yes.

Q Are you saying that First National City Bank was entitled to interest before October 31, 1973? Is that your contention?

A Yes.

Q The order of attachment was, in fact, served on October 5, 1973; isn't that a fact?

A I don't know.

THE COURT: Is there any objection in marking this in evidence as Hartford Exhibit 1?

MR. MURRAY: As long as it is not deemed to be binding against us. We don't concede that these were proper charges at all.

THE COURT: All right.

BY MR. MURRAY:

Q As I understand an overdraft, it merely constitutes a loan by the bank to its depositor for payment of the depositor's checks when the depositor doesn't have sufficient funds in its account; is that correct?

A Yes.

Q So the bank is actually lending money to the depositor; is that correct?

A That is one way of putting it.

Q And the loan charges or the interest charges is an interest rate that the bank determines it will make to that particular depositor?

A Right.

Q Is there any particular agreement signed by the depositor acceding to these interest charges?

A Not in this particular case.

Q So it was an arbitrary figure that the bank fixed in determining the interest?

THE COURT: I think there is an objection as to the form of the question. If you want to ask how they arrived at the figure, all right, but to characterize it an arbitrary figure, I think, is objectionable.

Q The account attached in this instance was a commercial checking account?

A A banking checking account.

Q And there was no interest paid to the depositor for the funds that were carried on deposit in this account?

A No.

Q You are smiling because sometimes depositors put money in the bank and get interest for lending the money, the use of their money for a while?

A Just as a checking account.

Q It still did not receive interest. The depositor did not have the use of these moneys while they were on deposit in the bank and it did not receive any interest payment for the funds although the bank had the use of the funds?

A The depositor could have used them.

Q The bank never paid the depositor any interest for the use of the funds?

A We did not pay interest on checking accounts.

Q I know; as I read your affidavit it appears to me that you have taken figures and assumed an obligation on the part of Banque Nationale to pay interest beginning with a date of September 24th of 1973 and I refer you to the attachment.

THE COURT: Mr. Murray, I want to ask you about that because the letter from First National which has not been marked but was shown to the witness indicates September 2nd, 1973 as the date service of the order of attachment. Now can we not have an agreement as to what date the order of attachment was served?

MR. MURRAY: I think there was a little problem in that regard.

THE COURT: In what respect?

MR. MURRAY: I think the order of attachment was served on the bank with respect to the Republic of Haiti and that the attachment was returned unsatisfied.

THE COURT: The first one was September 2nd.

MR. MURRAY: I believe that was the date.

It was returned unsatisfied because the bank claimed it had no funds on the part of the Republic and then another order was obtained based upon certain statements that the funds on deposit in the bank to the credit of Banque Nationale were, in fact, the funds of the Republic of Haiti and a new order was obtained and served on or about October 5, 1973.

MR. LOWENFELD: I think that is not quite right.

THE COURT: Let me hear and let us see. Don't we have the ordersof attachment? Why is Mr. Murray's statement not correct?

MR. LOWENFELD: I was not in the case then, since it was an ex parte attachment, and it is possible that Mr. Bruskin, who was the counsel for First National City, can add to the explanation. The first part of Mr. Murray's statement is right. Then there was an order of September 20th pursuant to which the bank segregated. Now, for a reason that I never understood, that order was replaced by another order on October 5th which became operative document on the basis of which we computed the time to answer.

There was an order served on September 20th. Maybe Mr. Aronson or Mr. Bruskin can clear that up. From the bank's point of view, that is when.

THE COURT: The order of attachment filed on October 5th talks about an attachment $867,000 with interest thereon and it was signed by Judge Weinfeld on October 5th. So therefore, the order of attachment that Mr. Murray was talking about as of October 5th was this second order.

Now the first order was apparently served but never became operative.

MR. MURRAY: It was returned unsatified.

MR. LOWENFELD: There were three orders, your Honor. Judge Weinfeld signed three documents. The first one was returned unsatified, the second one on September 20th and the third one, which I don't have a copy of with me, was on October 5th and why the second was superseded by the third, I don't know. Maybe Mr. Aronson knows.

THE COURT: Was the second one operative as Mr. Murray suggests or was it only the October 5th?

MR. MURRAY: I'm only suggesting that the October 5th order was complied with and no prior

orders were complied with.

MR. ARONSON: I believe that Professor Lowenfeld and myself and Mr. Murray can stipulate to this to save the Court's time. I am sure it is going to be a matter of record.

MR. MURRAY: In any event, I think the germane point is the date that the bank actually turned over the funds to the Marshall.

THE COURT: I also assume that the germane point is your provision that it is only $867,000.

MR. MURRAY: Absolutely.

Q The figure attached to your affidavit -- you have a copy of your affidavit?

A Yes.

Q The figures appearing on this statement of overdraft interest which is attached to your affidavit, were they prepared by you?

A Yes, the figures in the second and third column were prepared by me.

Q I presume that you computed these amounts by ascertaining what the overdraft was in the account or the charge made by the bank to the Banque Nationale and then recomputing the overdraft if the Banque Nationale had on deposit the $1,083,750 that you were talking about; is

that correct?

A The way I computed it was by taking the figures from the overdraft interest statements which were found in column 1 here under "Current Interest Charges" from the statement.

I then deducted any unrelated interest charges, i.e., those charges related to overdrafts which exceeded the amount of $1,083,750.

Q I think we are talking about two different papers now. Would you look at the computer printout attached to your affidavit which is a statement of overdraft interest? Do you have a copy of that?

A Not here, but I will be glad to get one.

Q Are you now looking at those computer printouts entitled, "Statements of Overdraft Interest"?

A Yes.

Q In one of the columns it has an item called "Interest Rates."

A Right.

Q That is how you determine the amount of interest to charge each month?

A Right.

Q Based upon that number in there, which part of these figures did you prepare yourself?

A I did not prepare any of these figures.

Q But your computations were predicated upon these figures?

A Yes.

Q Do you know who prepared these figures encompassed in these documents entitled, "Statement of Overdraft Interest"?

A Our overdraft interest department.

Q Do you know how they computed?

A I did not work with them. I know how they computed them.

Q It would seem to me --

THE COURT: No, counsel, phrase the question.

Q Is it fair for us to assume that Banque Nationale had overdraft charges in its account prior to the October 5, 1973 order of attachment?

A Our calculations start with September 24th and I cannot tell you anything prior to September 24th.

Q Was there any segregation of any sums made on September 24th of 1973 when your calculations began?

A That is when the segregation of funds --

Q Why did the bank segregate any funds at that time?

A The segregation was done as per our orders and the department did that under orders to do that. I cannot elaborate.

Q The interest charges were a direct result of the bank not having enough money in its account to cover newchecks that it wrote; is that correct?

A Yes.

Q Do you know whether Banque Nationale had bank accounts in any other bank during this period of time that the overdrafts were reflected on the statements?

A No.

Q Do you know whether or not Banque Nationale drew these checks that resulted in the overcharges for any purpose? Did you have any idea what the purpose was of these checks?

A No, they are not necessarily checks, by the way.

Q It is withdrawals from the account.

A Yes.

Q Could be wires?

A Right.

Q When did the bank receive advice or the return of money from the Marshall, the $867,000?

A I am not sure.

Q You can't have determined your interest

until you got the money back?

A I know we credited the funds on June 10th. I assume that is the date.

Q Is that when you received money back from the Marshall?

A I assume so.

Q Wasn't there any record as to when the money was deposited back by the Marshall?

A I know the funds got back into the account on June 10th.

Q Did you charge Banque Nationale interest for June 11th?

A Not June 11th; we charged them for June 10th -- through June 10th and up to June 11th.

Q But after June 10th, there were, in fact, numerous interest charges debited to the account of Banque Nationale; is that not a fact?

A (Referring.) Let me just get June out. After June 10th, there were numerous overdraft interest charges.

Q So Banque Nationale was overdrawing on its account even after it got this money back?

A Occasionally.

Q You have no records whether they were overdrawing on this account before the order of attachment?

A I don't have the record here, no. I just have since September.

Q Do you have any idea or any record to indicate by what authority First National City Bank segregated an additional sum of $216,750 from the account of Banque Nationale?

A All I know is that it is the bank policy to do that. I have no further records about it.

THE COURT: Mr. Murray, does it really make any difference? Assuming we take the figure $867,000 rather than the figure $1,083,750, the claim of the defendant Republic of Haiti by way of the bond must be limited to no more than $35,000 as such; including, I assume, counsel fees. Isn't that correct?

MR. LOWENFELD: That is correct.

THE COURT: Therefore, even if we took $867,000 instead of $1,083,750 that would be approximately 80 percent of the interest charges which would bring it down to somewhere in the area of $37,000 and, assuming just for an assumption's sake, that Mr. Lowenfeld or his client is entitled to his legal fees of approximately $16,000 or some figure of $15,000, the most that

the Republic of Haiti, if they were entitled to make recovery, would be approximately $20,000. So I would accept your position that only $867,000, if any amount at all, can be used, should be used for a segregated account or for the attachment; but it still comes down to the fact that the real question in this case, is it not, is whether or not the Republic of Haiti is obligated under the facts to pay.

MR. MURRAY: We haven't even come to the point where the bank had a legitmate right to charge interest for these so-called overdrafts.

THE COURT: Why don't you make that position

MR. MURRAY: The witness has testified there was no written agreement between the parties.

THE COURT: There is an understanding in the banking field that if you segregate accounts, counsel, you are going to be charged for such segregation.

MR. MURRAY: These are charges for overdrafts. My bank has an agreement with me -- maybe because they like me --

THE COURT: With all due respects --

MR. MURRAY: My bank does not charge me

these miscellaneous charges. Why First National City Bank charged the Banque Nationale for these charges, I do not know.

THE COURT: Why were such charges made?

A It is the common bank policy to charge clients for overdrafts, number one. Number two, in this particular case we have a line available to the Banque Nationale for which we charge them interest. The line includes overdraft privileges and other types of financing.

I am not sure if the line is advised or unadvised, which is banking terminology for whether we have this in writing to the client or whether it is informal but it is certainly well understood by the client that they are charged for any overdrafts they incur in this account.

MR. MURRAY: I still haven't seen any proof of any obligation.

#3 THE COURT: I suggest you rely upon that and that will be sufficient. If Mr. Lowenfeld believes such proof is not necessary under the circumstances, he will rest too. Then the Court will make that determination. If he feels that it's necessary, he will put in proof.

MR. LOWENFELD: One or two things might be cleared up with very brief redirect.

REDIRECT EXAMINATION

BY MR. LOWENFELD:

Q Mrs. Dean, there was some suggestion that the charges here might have been arbitrary in some way. Isn't it true that the interest charges were based on the prime interest rates plus a margin which was understood between Banque Nationale, in this case the client, and First National City Bank?

MR. MURRAY: I am going to object to that.

THE COURT: Objection as to the form. The question is sustained.

MR. MURRAY: Not only that --

THE COURT: If I sustain an objection, I think you ought to be reasonably happy to rest on that. If Mr. Lowenfeld wants to rephrase the question, he may do so, and if you have another objection, I will hear it.

Q How were the interest charges computed?

MR. MURRAY: I'm going to object to that, your Honor, on the grounds that the witness has already testified that she does not know and this would be an improper question on redirect.

THE COURT: Objection overruled. If you know, Mrs. Dean, how were the interest charges

computed? How did they arrive at the percentage?

A The percentage figure is arrived at by our department. It is arrived at by our deciding what spread over the New York base rate or -- excuse me, we decide to charge the client. The client is aware of this spread and it is an agreement with them. That is how the interest rate is calculated.

Q Whether oral or written, is it true that there was a prior understanding and prior practice of overdrafts between Citibank and Banque Nationale?

MR. MURRAY: I am going to object to the form of that question.

THE COURT: Rephrase it, without introducing the question, if you will.

Q Is it true that there was a prior understanding concerning overdraft charges, charges on overdrafts that Banque Nationale might make?

MR. MURRAY: If your Honor pleases, I am going to object unless the witness can state from her own knowledge as to what that agreement was.

THE COURT: We don't know if she is going to state whether there is one. Let her answer.

A Could you repeat the question?

THE COURT: Mr. Lowenfeld, repeat it, but

please do not start with, "Isn't it true".

Q Was there an agreement between Banque Nationale and Citibank prior to the commencement of this action concerning overdraft privileges and charges?

A Yes, there was an agreement.

Q You know that of your own knowledge?

A I know there was an approved -- it was an approved line.

THE COURT: What does that mean, "it was an approved line"?

A That means that our manager in Haiti asked us to approve this facility granting Banque Nationale an option to use an overdraft or to use other loan facilities in New York at the rate that he so indicated.

Q And was this same practice, the same line of credit, followed in this case?

A I don't understand the question.

Q Were the charges that you have been testifying to made pursuant to this understanding or agreement?

A Yes.

Q Just one more question: Was, if you know, the segregation of an amount, in excess of the amount turned over to the Marshall, common banking practice in attachment cases?

A I am not sure. I believe so, but I am not sure.

THE COURT: Professor, I repeat to you what I said to Mr. Murray. I don't know why we are dealing with the $216,000 in any case. The most your client could recover, if he could recover anything above counsel fees, would be in the area of $20,000. If he was obligated to, there is no question in this case that even an $867,000 as the attachment figure and at the interest rate that was talked about, either at 11-1/4 or 12 percent, the amount in question would be over $30,000, so I do not think, unless you see a loophole somewhere, where the $216,000 has any relevance to the issue we are trying here.

M OWENFELD: You are quite right. I was just trying to suggest there was something arbitrary here. I don't think there was. It is quite right.

THE COURT: Maybe in some other case somebody might raise it as to why a bank does segregate more than the amount in question but in this case I don't think the court need be advised of the intricacies of such activities.

MR. ARONSON: I will submit that the loophole you referred to is Mr. Lowenfeld has not established what the precise charges might be.

THE COURT: I think the Court doesn't have to duck its head. The interest charges ran from 11-1/4 until 12-3/4 and I will accept what Mr. Murray says that September is not; if any date should have been started, it should have been in October. That would reduce the amount by $750 more. I don't think the exact amount need be shown to the enth degree, Mr. Aronson. I may be wrong.

Any further questions?

MR. LOWENFELD: No further questions.

MR. MURRAY: I have one more.

RECROSS EXAMINATION

BY MR. MURRAY:

Q How long have you been with First National City Bank?

A Seven years.

Q Were you a party to the agreement made between First National City Bank and Banque Nationale?

A I did not talk directly to Banque Nationale.

Q Was this agreement in writing?

A Not between Banque Nationale and our branch, to my knowledge.

Q So anything that you have learned about this document has been passed on to you by some other party?

A I get a report from our branch manager requesting approval for these facilities and approved by New York.

Q What we are interested in knowing is what the agreement was between First National City Bank and Banque Nationale. Do you have any writing of any sort?

A I have nothing in writing.

MR. MURRAY: No further questions.

THE COURT: Any further questions, Mr. Aronson?

MR. ARONSON: No, your Honor.

THE COURT: Thank you, Mrs. Dean. You are excused.

MR. LOWENFELD: Before I call my next witness, I would just like to point out Mr. Murray suggests there is nothing in writing. We do have several affidavits from Mr. Andre in the record, who says he understands these other charges. There is correspondence back and forth in my original motion papers and in the supplementa

affidavit. I don't want to argue the point. We do have --

THE COURT: The Court cannot take an affidavit as evidence unless there has been an agreemen with counsel as such.

MR. ARONSON: I would object to the affidavi on the grounds of hearsay.

THE COURT: I tend to think that may be so. You don't have any way of examining the affidavit under cross examination but the witness' testimony talked about a usual banking practice and that, I don't think, is to be stricken as such nor did anyone even raise that objection as to whether or not there has been an adequate showing of proof as to the type of agreement and its detailed terms is a point for counsel to argue but a banking witness can testify as to what the practice is and what was told to her in the usual course of her banking activity.

MR. MURRAY: All this witness can testify to is the usual banking practice of First National City Bank and, not necessarily, a banking practice.

THE COURT: She was told what the banking arrangements were, counsel.

MR. MURRAY: That is not evidence before us; that is hearsay.

THE COURT: I don't know why it isn't. You didn't object to it going in as being hearsay. I assume you had it in because you expected it to be the usual banking practice.

MR. MURRAY: I did make the usual objection.

THE COURT: We will see in the record. There is no question in my mind there is banking arrangement. She testified as an assistant vice president. It is true she didn't have the exact data with her but I assume both parties could have served her with a subpoena to bring it in or ask her to return it.

Let's have the next witness.

MR. LOWENFELD: I would like to call Mr. Serge Charles.

THE COURT: Mr. Charles, maybe we ought to take five minutes. We will complete this witness and, hopefully, complete Mr. Lowenfeld. I would like to break for lunch about 1:30 or 2:00 o'clock.

(Whereupon a five minute recess was taken.)

S E R G E E L I E C H A R L E S, having first been duly sworn by Magistrate Schreiber, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWENFELD:

Q Would you state your full name and spell it for the record?

A Serge Elie Charles, S-E-R-G-E E-L-I-E C-H-A-R-L-E-

Q You are a citizen of the Republic of Haiti?

A That is correct, sir.

Q Could you just briefly state your education, please.

A I am a graduate from the State Unive. ity of Haiti, licensed degree in law. I am also a graduate from New York University Law School, International Law.

Q Could you tell us your present position?

A I am legal counsel for Haiti Mission to the U.N. and also to the Foreign Ministry.

Q In other words you are and have been at all times relative to this proceeding a lawyer employed by the Ministry of Foreign Affairs?

A That is correct.

MR. ARONSON: Objection. Can we establish what is the relevance to these proceedings?

THE COURT: This is introductory, counsel.

Q My next question will make that clear. Could you state how you first became involved in this case?

A I was in New York in September, 1973 when I was called by the Foreign Ministry to assist in that case.

Q Is it true that a paper had been served in Haiti when they called you?

MR. ARONSON: Your Honor, I would like to object to any testimony of Mr. Charles until it is established that he is testifying based on his own personel knowledge as opposed to hearsay information.

THE COURT: Objection sustained as to the form of the question.

MR. LOWENFELD: I was simply asking Mr. Charles why he was called.

THE COURT: We assume it was in connection with this matter so why don't we just move ahead.

Q You were called by the Foreign Ministry to assist in the case?

A That is correct, sir.

Q What did you do then?

A I took the plane, I went to Haiti and I met with the Foreign Minister and a few other officials of the Haiti

Government and I presented the motion.

Q Is it true that you then recommended retention of New York counsel?

A Not at that time. First of all I advised them that there were two ways to go about it. You could go the diplomatic route or the legal route.

MR. ARONSON: Excuse me, your Honor --

THE COURT: He said there were two ways: The diplomatic route or the legal route.

A (Continued.) At the same time I contacted my Professor here and asked him advice and he did advise me in taking the legal route.

Q Is it true, I don't think it is necessary to go through all that, is it true that since the time that you contacted me and then I was retained, that you have been the liaison between counsel and the Republic of Haiti?

A That is correct, sir.

Q Is it true that at all times since October, 1973 you have been familiar with this case?

A That is correct, sir.

Q And that when I needed information in connection with the --

THE COURT: Mr. Lowenfeld, please. I will interrupt and sustain the objection. We assume

that Mr. Charles was acting as liaison between you and your client, the Republic of Haiti, and all matters, I assume, we can assume, were transferred or he was kept abreast of everything that was happening.

MR. LOWENFELD: That is all I wanted to establish.

Q Skipping through the present litigation and moving directly to the motion on the bond, did you consult with the president of Banque Nationale, Mr. Andre, concerning payment of the expenses?

A That is correct, sir.

Q Do you know approximately when you did?

A It is difficult to put a date on it because every time I see him, we talk about that.

Q Let me be specific. Do you recall that I reported to you following a conference before Magistrate Schreiber on May 12th, 1975?

A Yes, that is correct.

Q Do you recall that I reported to you that Magistrate Schreiber --

MR. ARONSON: Objection, your Honor.

THE COURT: Objection sustained.

Mr. Lowenfeld, may I ask the witness questions?

MR. LOWENFELD: Yes, your Honor.

EXAMINATION BY

THE COURT:

Q Did the Republic of Haiti pay Banque Nationale for the approximately $46,000 charges?

A That is correct, sir.

Q When, approximately, did they pay?

A I think it was in July.

Q In what manner did they pay them?

A By debiting the account of the Republic of Haiti at Banque Nationale.

Q What was the basis of the Republic of Haiti making payment to the Banque Nationale? Was there an agreement between them; why did they pay it?

A That was a basic understanding.

Q What was?

A Since Banque Nationale was not involved in the transaction, that the transaction was a Republic's transaction, we think, at that time, that it was equitable, fair that the bank pay.

Q You mean you made an equitable payment, in fact?

A That is what it was.

Q Was there any agreement in writing to require you to make such a payment?

A I think so.

Q When you say you think so, what agreement are you speaking of?

MR. ARONSON: If there is an agreement, I suggest that the best evidence of such agreement --

THE COURT: That is what I am getting to.

Q When you say you think there was written agreement between the parties requiring the Republic of Haiti to make payment, what agreement?

A There was no written agreement. According to the bank's president who told me that the Republic --

Q The bank suffered a loss?

A The bank suffered a loss and the Minister of Finance agreed to suffer the loss itself. That he would compensate the bank for it.

Q Did the Minister agree because of an equitable consideration? He thought it was right for him to do so?

A That is right.

Q Was there any legal consideration? Was there anything he felt required him legally to make such a determination?

A No.

Q Was it an equitable determination?

A Yes.

THE COURT: Any further questions?

MR. LOWENFELD: Just a couple of things that I wanted to clear up though you have asked most of the questions that I was going to ask.

I think, though Mr. Charles' English is very good and he was one of our better students, I think there may have been a slight misunderstandi

BY MR. LOWENFELD:

Q Isn't it true that there was an exchange of letter concerning this payment?

A Definitely so.

THE COURT: Do you have the letters, Mr. Lowenfeld?

MR. LOWENFELD: Let me show them to the witness. The letter attached to my affidavit of August 5th is in French and in English.

THE COURT: Is it the same affidavit that Mrs. Dean --

MR. LOWENFELD: No, it is not.

THE COURT: All right, go ahead, Mr. Lowenfeld.

Q Do the letters of July 25, 1975 represent,

as you understand it, the agreement between the bank and the Republic?

MR. ARONSON: Objection, your Honor. The letters speak for themselves.

THE COURT: The letters will. Is there any objection to the letters being introduced?

MR. ARONSON: Yes, first on the grounds of hearsay. Second on the grounds that they are not the best evidence unless he has the originals in his possession.

THE COURT: If he can identify the signature on the letters, that would be sufficient for the letters to go into evidence as such.

MR. ARONSON: That would authenticate the letters, possibly, but because of the fact it is germane to this hearing as to whether or not the letters were sent, the Court should, I think, insist on having the originals.

THE COURT: I don't think we need the originals.

EXAMINATION BY

THE COURT:

Q Mr. Charles, I show you this letter, which is part of the affidavit of Mr. Lowenfeld of August 5, 1975

and I ask you if you can, can you identify the signature on this letter written in French?

A Yes.

Q Whose signature is it?

A This is the Minister of Finance.

Q Have you seen it before?

A Yes.

Q Is there any question in your mind that that is the Minister of Finance's signature?

A It is correct, sir.

THE COURT: Is there any question that the translation into English is correct or shall I ask the witness if, in his judgment, it is?

MR. ARONSON: I have no objection to the translation.

MR. MURRAY: I accept the translation.

Q I show you this letter dated July 29, 1975. Do you recognize the signature on the letter with the title of Banque Nationale on it?

A Yes, I do.

Q Whose signature is it?

A The signature of the president of Banque Nationale.

Q Have you ever seen it before?

A Yes.

Q Is it the same signature?

A Yes.

Q The two letters, one July 25th and one July 29th will now be deemed in evidence as Defendant Republic of Haiti Exhibits 2 and 3, setting forth the understanding of the parties.

(The documents above referred to were deemed in evidence, Defendant Republic of Haiti Exhibits 2 and 3, respectively, for identification, this date.)

MR. ARONSON: Can I renew my objection on the grounds of hearsay?

THE COURT: Objection overruled.

MR. MURRAY: If your Honor please, I am also going to object on the grounds that it is also not the best evidence.

THE COURT: When two parties exchange letters, there is, of course, still the question of what was the legal responsibility, if any, of the Republic of Haiti to make payment. These letters don't go to that issue, just to the understanding of the two parties.

MR. MURRAY: Are you referring to the affidavit of July 29th?

THE COURT: Affidavit of July 29th.

MR. MURRAY: There are several letters in there dated July 25th, all the same date.

THE COURT: The only one I am talking about is the letter of July 25th and the responsive affidavit by Mr. Andre. Weren't these the two documents that you are talking about?

MR. LOWENFELD: That is correct.

BY MR. LOWENFELD:

Q Were you there when this letter was signed?

A Which letter?

Q The letter by Mr. Andre?

A Yes.

Q And the affidavit by Mr. Andre?

A I was not present.

Q The letter of July 25th you personally saw?

A Yes.

THE COURT: Next question.

Q The question has been raised by counsel and Judge Schreiber as to what was the reason for this exchange of letters. Was there a law of Haiti which authorized or required such a practice?

MR. ARONSON: I'm going to object. The

witness has already testified on direct testimony that it was not a legal consideration. It was an equitable consideration. This would be a contradiction.

MR. LOWENFELD: Let's see what he says.

MR. ARONSON: I don't believe the question i proper. If he wants to impeach the prior testimony, there is another way of doing it.

THE COURT: Most equitable considerations are based on legal grounding. Are they not?

MR. ARONSON: I do not agree with that. I know that American Express made a very substantial settlement based on equitable considerations that perhaps might have been founded --

BY THE COURT:

Q Is there any Haitian law applicable to this relationship between Banque Nationale and the Republic of Haiti?

A What I could say is that the bank suffers at the time of the bank loss.

Q Therefore the bank was repaid by the Republic

A Because of that.

THE COURT: I think the answer is clear.

The Republic of Haiti felt that the bank's loss was due to this case and they, therefore re-compensated their bank for the damages the bank incurred.

MR. LOWENFELD: I think if you read the letters, the bank said to the Ministry, "Hey, we have suffered a loss." And then the Minister said, "Yes, that is true." And law neither applied or prohibited.

THE COURT: Isn't that the issue that we will have to resolve on a legal basis? The bank suffered a loss, had damages, went to the Republic of Haiti and said, "We have damages because this case involved you." And the Republic of Haiti said, "We agree and therefore we will make up your damages."

And now the Republic of Haiti is going against the Hartford Insurance Company saying you set up a bond for these damages. The Hartford Insurance Company is, in turn, arguing, as I assume they have been, that these are not damages the Republic of Haiti suffered because the Republic of Haiti could have walked away and not compensated Banque Nationale and Banque Nationale could not do

anything about it.

BY THE COURT:

Q Could the bank have done anything if the Republic of Haiti said they would not pay it?

A They could have gone to court.

#4 Q Where?

A In Court in Haiti.

Q What would they have done in Court in Haiti?

A This I don't know. That would be up to the judge to decide.

BY MR. LOWENFELD:

Q There was a suggestion made here in prior argument that this transaction was a charade put on only for the Magistrate. Was there?

THE COURT: With all due respect, I don't think anyone has said this is a charade. In prior hearings all counsel has raised as an issue of law is whether or not the Republic of Haiti was responsible for any damages incurred by Banque Nationale, assuming they incur such damages.

Q Was there any agreement to reverse this

transaction depending on the outcome of the proceedings in New York?

A No.

Q Are there any other documents respecting this that you know about?

A No.

Q Have you made a search?

A I don't have any reason to make a search because I would have been involved.

MR. LOWENFELD: I think that basically completes my examination. I would like to make just one other line of questions.

THE COURT: Sure, go ahead.

MR. LOWENFELD: And the line of questions concerns, in a sense, the best evidence. As you know, we had originally thought that we would get Mr. Andre and I would like to establish why Mr. Charles is the best witness I can bring.

THE COURT: You want to bring testimony as to why Mr. Andre is not here? It won't be held against you for not producing Mr. Andre. They are not going to argue that Mr. Andre's absence should be used by the Court to draw some adverse interest. Are you?

MR. MURRAY: I will not.

MR. ARONSON: No, your Honor. I would suggest it is irrelevant as to why Mr. Andre is not here.

THE COURT: If they raise no objections, I would see no reason, unless you see some other reason.

MR. LOWENFELD: If they are not objecting --

THE COURT: They will raise no objection to Mr. Andre's failure to come forward to testify.

MR. LOWENFELD: If that is understood, then I have no more questions of this witness.

MR. ARONSON: To phrase it the way I would like it phrased, we won't expect the court to draw inference from the fact that Mr. Andre is not here.

THE COURT: Counsel, you may begin.

CROSS EXAMINATION

BY MR. ARONSON:

Q Are you an employee of the Republic of Haiti?

A That is right.

Q In connection with your employment, did you have any responsibility with respect to the overdrafts that were made on the account No. 10926785, that is the account of Banque Nationale at First National City Bank?

A I don't understand the question.

MR. ARONSON: Read the question.

(The question was read.)

A The answer is no.

Q Did you have any responsibility with respect to expenditures made from that account?

A No.

Q You have no idea of the specific purposes for which expenditures were made from account No. 10926785?

A No.

Q Who would have that knowledge?

A I would say the president of the bank.

Q Mr. Andre?

A Yes.

Q Do you know whether Banque Nationale maintains any corresponded accounts throughout the United States?

A I know they have a correspondent in Miami, for example.

Q Do they have any others in the United States?

A I don't know.

Q Do you know if these accounts are interest-bearing accounts?

A No.

Q Are they checking accounts?

A Checking accounts.

Q Do you know whether any of the expenditures which were made from the Banque Nationale account at First National City Bank during the period October 1973 through June 1974 could have been made from other corresponded bank accounts within the United States of Banque Nationale?

A This I don't know.

Q You don't know?

A No.

Q In Mr. Andre's affidavit, which has been submitted to the court, dated July 29, 1975, Mr. Andre states on page 2, first paragraph, "The funds attached in New York, referring to account No. 10926785 in First National City Bank, are not the property of the Haitian Government but belong to Banque Nationale." Is that statement true?

A That is correct.

Q Was that true in Ocotber '73 through June '74

A That is correct.

Q In Mr. Andre's affidavit dated October 31, 1973 Mr. Andre states on page 3, second full paragraph, "BNRH" which is referring to Banque Nationale, "is not part

of the Government of Haiti." Is that statement true?

THE COURT: Counsel, I find this somewhat difficult to understand. You are asking this witness to testify to the truth of what some other witness swore to.

MR. ARONSON: No, I am asking him to testify to the truth of the facts.

THE COURT: Ask him if the fact is true. You may phrase the question but I don't think it is proper to ask him whether or not a statement sworn to by someone else is true. You want to know if the fact is true; objection sustained. Rephrase the question.

Q Is Banque Nationale a part of the Government of Haiti?

A I have answered the question.

EXAMINATION BY

THE COURT:

Q What is the relationship between the bank and the Republic of Haiti?

A I think the bank is a commercial bank but has a special relationship with the Government of Haiti. It is the fiscal agent and the treasurer for the Government.

Q Where is it incorporated?

A Actually in Haiti.

BY MR. ARONSON:

Q Do you have any responsibility with respect to the banking functions of Banque Nationale?

A No.

Q You know nothing about their internal operations?

A Not in detail.

(Discussion off the record.)

THE COURT: Counsel, maybe I can ask Mr. Murray to ask a few questions and you can come back.

MR. ARONSON: I am almost done.

Q Are you a graduate of any Haitian law school?

A Yes.

Q In connection with the letters which have been admitted into evidence, I believe, referring to Mr. Bros' letter dated July 25th to Mr. Andre, to you know for a fact whether that letter was ever sent?

A How could it be otherwise?

THE COURT: Just answer the question; yes, no or I don't know.

A Yes, it was.

Q How do you know that? What do you base your conclusion on?

A I was present when Mr. Andre signed the letter and it was sent by messenger in my presence.

Q You saw the messenger pick it up?

A Pick it up and go with it.

Q You were in Mr. Bros' office at that time?

A No.

Q Where were you?

A With Mr. Andre.

Q You are referring to Mr. Andre's letter to Mr. Bros?

A That is correct.

Q Do you know for a fact if Mr. Bros received the letter?

A I can say yes because when I went to Mr. Andre, at the time he was drafting the affidavit, I saw the letter.

Q You saw the letter in whose possession?

A Mr. Andre's possession.

Q Mr. Andre; we are speaking of the letter of July 25th from Mr. Andre to Mr. Bros.

THE COURT: Wasn't that put in evidence, Mr. Bros' letter to Mr. Andre was put in and the affidavit was put in.

MR. ARONSON: The affidavit incorporates by reference the letters. If, however -- I didn't realize the affidavit was being put in.

THE COURT: I thought that was what was marked in evidence.

MR. ARONSON: Are the two letters in evidence?

THE COURT: No, only the letter of Mr. Bros to Mr. Andre and the affidavit --

MR. LOWENFELD: I think, your Honor, it doesn't matter how you mark them. But the affidavit of July 29th from Mr. Andre attaches two letters. Mr. Charles' testimony is that he saw one sent and he saw the two of them with Mr. Andre when the affidavit was given.

MR. ARONSON: I withdraw the prior questions that were asked in connection.

THE COURT: I understand.

Q I am referring to the letter of Mr. Bros to Mr. Andre. It is in evidence. Do you know for a fact if Mr. Andre received that letter?

A I was not present. I know he received it because I saw his answer to Mr. Andre's letter with his signature and I recognized the signature so I assume that.

MR. MURRAY: I want to object for just a moment. I know Professor Lowenfeld has no intention of leading the witness or coaching --

THE COURT: Off the record.

(Discussion off the record.)

Q Is your testimony that you saw Mr. Andre in possession of Mr. Bros' letter?

A Yes.

MR. ARONSON: Your Honor, could I take the interlude of Mr. Murray's questions?

THE COURT: Yes. Go ahead.

CROSS EXAMINATION

BY MR. MURRAY:

Q If I had my bank account attached in the case where perhaps someone was suing Professor Lowenfeld and I had nothing to do with that case, I know I would do everything I could to get my money back. .

THE COURT: Counsel, I am going to sustain the Court's objection. With all due respect, if you want to ask him a question, please do not ask him about yourself. You want to give him a hypothetical give him a hypothetical. But do not give him you as the party to the hypothetical. He may answer it completely differently if it was

anyone else but you, with all due respect.

Q Did the Banque Nationale ever attempt to get a bond of undertaking to discharge an attachment of the bank's moneys at First National City Bank as is provided by the New York State Civil Practice Law and Rules?

THE COURT: I will object. I will sustain an objection. I don't understand the question.

Q I will rephrase it. Did Banque Nationale ever, after the attachment, attempt to get a bond of undertaking and I will show you a form. (Handing).

THE COURT: Let's mark it for identification. How can this witness testify about Banque Nationale?

MR. MURRAY: I am asking him.

THE COURT: If he knows.

MR. MURRAY: Yes.

THE COURT: Ask him if the Banque Nationale ever got an undertaking to release the attachment.

Q Did it?

A This I don't know.

Q You graduated from NYU School of Law?

A That is correct.

Q You know there is a procedure whereby a

person whose accounts have been attached can obtain a release of these accounts by filing an undertaking; do you know?

A This I don't know.

Q Did you ever consult with Professor Lowenfeld about getting a release of Banque Nationale's funds by merely getting an undertaking?

THE COURT: Counsel, wait. I don't understand the point. There are one of two ways a party can proceed. They can put up an undertaking or keep the attachment in order.

Are you suggesting that an undertaking would have been cheaper than a bond?

MR. MURRAY: Absolutely.

THE COURT: You will have to present proof on that, counsel.

MR. MURRAY: It is a standardized --

THE COURT: I am not going to take an oral argument on the point. If you want to show they could have mitigated damages by an alternative measure other than keeping it, I will permit you to put in proof.

Q As far as you know, no attempt was ever made by anyone to post an undertaking in substitution for

the attachment?

A I don't know.

Q This was never discussed with Professor Lowenfeld at all?

A No.

Q Do you have any ideas as to why overdrafts were incurred in the account of Banque Nationale th resulted in those interest charges that were made?

A I really don't know.

MR. MURRAY: No further questions.

CROSS EXAMINATION

BY MR. ARONSON:

Q Do you know when Banque Nationale first learned that the interest on overdrafts had been debited to its account by First National City Bank?

A It is hard for me to say but I think it must have been some time in October.

Q Notwithstanding the fact that in June, as Mrs. Dean testified, all the charges were in fact paid by Banque Nationale to First National City Bank?

A They were paid Lowenfeld, October '73. He's talking about June.

THE COURT: That's when the witness testified that all the overcharges were paid.

Q Banque Nationale, to the best of your knowledge, knew at that time that they were paid?

A Yes, paid.

MR. ARONSON: I have no further questions of this witness.

THE COURT: With regard to the testimony of Professor Lowenfeld, we have the affidavit that he has submitted and I will permit you, obviously to examine him on anything you wish, but I do want to ask whether or not there will be any examination of Mr. Lowenfeld and, if so, if you would kindly point out to me what areas that you wish to examine him on, I believe that one of the objections made by Mr. Murray was that the last eight hours of the Professor's time schedules indicated that he worked on preparing motions and supporting papers concerning the legal costs and damages to be satisfied out of the bond given by Hartford and I take it, Mr. Murray, your objection would be that those eight hours or $480 are not part of the legal fees in the defense.

MR. MURRAY: Our position is that these eight hours should not be included.

THE COURT: If Mr. Lowenfeld waives or his client waives these eight hours, reducing the amount by $480, is there any other area? Is there any other area that you gentlemen wish to examine Mr. Lowenfeld on?

MR. ARONSON: I wish to examine him on the computation of his fees, among other things, but I suspect it is not going to take more than ten minutes.

THE COURT: Mr. Lowenfeld, would you step forward and raise your right hand.

MR. MURRAY: I will waive the swearing, if you will, counsel.

THE COURT: No, there is no reason why he shouldn't be sworn unless he has religious reasons.

ANDREAS F. LOWENFELD, having first been duly sworn by Magistrate Schreiber, was examined and testified as follows:

THE COURT: Mr. Lowenfeld, you have submitted to this Court an affidavit which sets forth your background or professional standing and the work that you performed in this case. It is dated November 19, 1975 and putting aside the hours which have been waived, I understand that Mr. Aronson will now conduct an examination of you on these matters.

May I suggest that both the examination and the answers be only with regard to the matters that are set forth in the affidavit.

DIRECT EXAMINATION

BY MR. ARONSON:

Q Mr. Lowenfeld, are you admitted to practice law before the courts of the State of New York?

A I am.

Q Are you admitted to practice law before the Southern District of New York?

A Yes.

Q Prior to June 4, 1974 in connection with this case, how much time did you expend in rendering

services to Haiti?

A 260 hours less the eight, that would be 252 hours.

THE COURT: In connection with this matter?

A Yes.

Q Did you maintain time records in connection with rendering services?

A Yes, I did.

Q Did you maintain any time sheets?

A No, I maintained them in a little black book which I would write down every day (referring) how I would spend the time.

Q In a calendar?

A It is a kind of calendar. I would put the date on the side and the time spent (indicating).

BY THE COURT:

Q Are you pointing to a book that you have in your hands?

A I have it in my hands.

Q What do you call it?

A It has a lot of other things as well. I put addresses. I don't maintain a full practice. I put here, "Haiti, 1/7, Conference. Mr. Charles - one hour" that kind of thing.

BY MR. ARONSON:

Q Would you characterize it as a pocket-day calendar?

A Pocket notebook.

THE COURT: You wish to look at it?

Q Are the calendar entries which relate to this case and also your June 4th letter attached to your affidavit and admitted in evidence, the ones you have in your possession right now?

A I have not wanted to introduce it because it is a little messy, like everyone's little calendar but it was this that I used to make this (indicating) plus the documents that were introduced plus I have an office desk calendar.

THE COURT: When you set forth an hour. For example, for the first matter 22 hours in connection with the services rendered as set forth in your first paragraph of your letter of June 4, 1974 to the Republic of Haiti. In the left hand margin you put 22 hours. Are each of these hours for work performed in connection with that paragraph listed in your book?

A Your Honor, as I think I mentioned in my covering affidavit, this is, to some extent, a reconstruction. My calendar doesn't precisely point out what I was doing each

time but I had the total hours. I thought, "What was it at that time I was doing?" So that is my best effort. That is all I can say but the purpose is to suggest that that was 22 and the next was 30 and so on.

Q In connection with paragraph 1 in computing that 22 hour figure, you didn't add up 22 hours or numerals that summed up to 22 that were in your calendar, did you? It was an estimate? It wasn't a precise computation?

A The thing in my calendar adds up -- the figure is partly a sum and partly a calculation, depending on what -- for instance, I may have worked both on the brief and a motion at the same time and I worked on this bill which was designed to explain to the client what I was doing. So, to some extent, it is a calculation and not a precise computer printout as the bank would do.

Q It is not precise; is it?

A The total is precise and on the side is my best estimate.

Q The description is an estimate but the total hours, which were not on the original bill to Haiti, are precise?

A The total is precise and the description is precise. It is possible, for example, that there were really 24 hours and 28 hours rather than 22 and 30. I did it to

the best of my reconstruction.

Q There is no question in your mind that prior to June 4, 1974 you spent 252 hours rendering services to Haiti?

A That is correct.

Q Other than looking at your calendar, what did you do in computing your total hours in your day calendar?

A I looked at a little black book, my desk calendar, my long-distance telephone records and the pile, which is now very large, of briefs, memoranda, motion papers and the like.

Q I don't believe you answered my prior question as to whether the calendar you now have in your possession refers to any of the matters of Haiti which were included in this June 4, 1974 statement.

A I am sorry, I don't understand the question.

Q While you have been sitting there, you pulled out a little black book and I am wondering whether any services rendered to Haiti from October '73 to June '74, described in that book, are the hours allocated in that book you have in your possession right now?

A I am sure I don't understand the question.

THE COURT: Does your book contain

specific hourly time for this case?

A Yes.

Q Is that the book you have right there?

A It is possible that there are some entries that are not in the book and the book doesn't break down precisely the same way that this does, in terms of motion, briefs, hearings. Sometimes it does and sometimes it doesn't. I don't know who else could read it or I might have introduced it.

MR. ARONSON: I would like to introduce it.

THE COURT: You can look at it, counsel, and ask some questions. I am not sure I understand the thrust of your position.

MR. ARONSON: The thrust is Mr. Lowenfeld merely estimated everything he did. Though, in fact, he might have rendered the services, the hours, I think, are outrageous.

THE COURT: Counsel, I have always asked you if you have any testimony about how much your

ape #5 firm put in during this period of time. As you know, in our pre-trial hearings, I have indicated that to you and you had, at that time, refused to give Mr. Lowenfeld or honor his request to subpoena it because you say he didn't pay your fee on it

but it seems to me that one of the indices is how much time your firm billed its client from the beginning of this case until the gentleman's dismissal.

MR. ARONSON: I respectfully don't agree with that.

THE COURT: Counsel, I am asking you -- I am going to take your word for it -- I am asking you how much you billed your client for the work performed until the case is dismissed? That is one of the factors the Court should consider as set forth in the Manual For Complex Litigation. It is also one of the factors that Judge Moore referred to as to the quality of work on the other side as well as the intricacies of the case as well as the time spent.

Time spent is necessary. It is the first factor to be looked and, thereafter, the Court should be looking to other factors.

MR. ARONSON: Fine, your Honor. I will submit all our time records.

THE COURT: I asking if you wish to advise this Court how much time was spent.

MR. ARONSON: I think I can tell you the

total amount.

THE COURT: What is it?

MR. ARONSON: $35,000.

THE COURT: I am talking about with respect to your representation from the time you filed the case against Mr. Lowenfeld's client until Judge Weinfeld discussed it, approximately.

MR. ARONSON: Approximately $35,000 but that also includes matters that do not pertain to the matters of Haiti, just as Mr. Lowenfeld's --

THE COURT: Mr. Lowenfeld is not contending that he is charging for matters of the Republic of Haiti not connected with this case. How much of the $35,000 is not connected with this case?

MR. ARONSON: I haven't figured it out but the records are here.

THE COURT: I suggest you figure it out and let the Court know. I will accept your word for it.

MR. MURRAY: I think we are concerned with how much time Professor Lowenfeld says he puts in this case and the reasonable value for it. I do not contest that $60 is a reasonable hourly fee.

THE COURT: I believe that it is in the

City of New York for a man of the Professor's --

MR. ARONSON: It is not contested.

THE COURT: $60 an hour is not contested. Are you contesting Mr. Murray, the 252 hours for the work performed?

MR. MURRAY: If Professor Lowenfeld says he put in this time and has allocated the hours, I do not object. I would like an explanation of a couple of hours.

THE COURT: Ask him.

CROSS EXAMINATION

BY MR. MURRAY:

Q Would you look at your bill, Professor? Turn to the second page and you have an item 27 hours in the left hand margin. It refers to a separate action against Banque Nationale de la Republique d'Haiti. How is that related to this lawsuit?

A The answer to that is when Judge Weinfeld took the present case under advisement on the plea of sovereign immunity, as well as other pleas made on behalf of the defendant Aerotrade by its same counsel and on the basis of the same contract whose breach is alleged, made a motion. This time not ex parte but contested and on notice to me, to attach Banque Nationale's funds once more ar name

Banque Nationale itself as defendant. I opposed that motion.

I appeared before Judge Weinfeld and explained that for this limited purpose the Republic of Haiti had asked me to represent Banque Nationale as well in opposing the motion to attach. He accepted that.

I did so and then when the case was finally decided on the same day, the two cases were decided together and the first one, there was a ruling on sovereign immunity. The second one was there, simply was no cause shown for attachment. I included this in my bill and the bill was paid so it is the twenty-seven plus five for oral argument that followed immediately.

Q Is it not a fact that 27 hours on the second page plus the five hours appearing right after it for the oral argument was a consequence of your representing the bank and not the Republic of Haiti?

A It is hard to distinguish testimony from argument. I would answer to that question no.

Q You were representing the Republic of Haiti?

A That is right.

Q Who appeared for the bank?

A I am not sure whether a transcript was taken but I announced to Judge Weinfeld, I think you will see that

I showed up, but I announced to him that I was appearing, as it were, especially for the bank.

Q There was no other attorney answering for the bank?

A No other attorney.

Q You were there appearing for the bank at the request of the Republic of Haiti?

A Although there was no formal request, I was their New York lawyer.

Q You understood that the Republic of Haiti was going to pay you for the appearance?

A That is right.

Q Was the Republic of Haiti a party for that separate lawsuit?

A There was no lawsuit. It was a motion to file by attachment.

THE COURT: Let's get on to the next. I think you have made your point.

Q Professor, would you go back to the second page of your bill and just explain to me why you put down eight hours for the oral argument before Judge Weinfeld on November 27, 1973?

A I think the point included preparation for the argument. I think I did a little bit of moot court and so on.

We were not before the Judge for eight hours. And then it was most of the afternoon, if you recall, and I came on near the end. The actual argument was about an hour and a half.

Q Is the same explanation due with respect to the oral argument on January 15, 1974?

A I believe so, yes.

Q How about page 3 of the affidavit? You have eight hours for oral argument before Judge Weinfeld on May 30, 1974. Is it the same explanation?

A Same explanation. It was preparation and papers and so on. We went up and down.

Q Can I ask you this question then and I am through questioning you on your bill and the charges you have rendered. Did you ever make a recommendation as the attorney for the Republic of Haiti in this case to proceed in accordance with Section 6222of the CPLR, which I have a copy of here, to vacate the attachment of the funds of the Banque Nationale?

A (Referring.) The short answer to the question is no.

THE COURT: What section is that?

MR. MURRAY: Section 6222 of the CPLR.

Q Do you know what the premium would have been

to obtain such a bond?

THE COURT: For a million dollars?

MR. MURRAY: $867,000?

A No.

Q Did you make any attempt to find out?

THE COURT: He said no, counsel.

MR. MURRAY: No further questions.

MR. ARONSON: Your Honor, have you decided whether we are going to be able to put Mr. Lowenfeld's calendar pocket book in evidence?

THE COURT: If you want to look at it, you may, and if there are any specific sections he doesn't want you to see because he feels they are not applicable and you want to look at these sections too, I will examine them beforehand to determine whether or not they have any relevancy. But you may look at his book and see what is listed there.

MR. ARONSON: Could I see the book?

THE COURT: What do you want to see?

MR. ARONSON: Officially how he computed the 22 hours.

THE COURT: Mr. Lowenfeld, show him which pages are worked out. You may assist him.

(The witness complies)

THE WITNESS: On the left side are disbursements. On the right side are hours. The first conference was an hour. There were several people who came. It says, "Conference Mr. Charles." Two other people whose names I no longer remember. It was three hours.

Then there are subsequent two hours here. Three, one, conferences, research in the library. Preparation of motion. Conferences. Sometimes they were more specific than other times.

REDIRECT EXAMINATION

BY MR. ARONSON:

Q Isn't it a fact some of the numbers have a date and the number of hours and don't give a description of the services?

A That says, "Brief," and then these follow. It is quite right it is sketchier than it would be if you had Shearman & Sterling here.

MR. ARONSON: Or Lowenfeld & Lowenfeld.

THE COURT: Now counsel, both of you stop that.

Q In connection with paragraph one of your June 4, 1974 letter wherein you describe services you performed in 22 hours, does that include any time in connectio

with Haiti's request for a suggestion of immunity from its Department of State?

A I don't think paragraph one does, but one of the paragraphs in here does include that time, yes.

Q Does that include any of these hours spent in connection with requesting a sovereign immunity?

A I think two does, paragraph two.

Q How many hours in paragraph two relate to the request for suggestion of sovereign immunity?

A The 30 hours include several things. They include a trip to Washington. They include conference with the fiscal officer as well as with people in the legal office of the State Department and, for instance, these conferences yielded some of the letters that were subsequently introduced.

Q If you undersand my question --

THE COURT: I don't know where we are going here. Come on now. We need some quick movement on this case. You are not going to take him through every single one of these paragraphs, I take it?

MR. ARONSON: Only four more.

THE COURT: You are not going to do four more.

MR. ARONSON: I object.

THE COURT: You may object. I do not think that Judge Moore and Cannella ever contemplated though and a claim of $15,000 in a complicated matter where your client pays you probably $25,000 or $30,000, that we will spend the rest of the day having the witness being examined. This is reaching the point of no return.

I will not permit a paragraph by paragraph description as you are doing now. I want some examination, as such, but this is going too far.

MR. ARONSON: Your Honor, if I may point out --

THE COURT: I think you are harassing the the witness on this case. There is absolutely no basis, in my judgment, for some of your approach in this case. I can understand Mr. Murray's approach and I will rule that the 32 hours, vis-a-vis the Banque Nationale, are not to be included with the other eight hours of 40 hours but I do not understand your approach, counsel.

MR. ARONSON: I submit that any services

rendered insofar as of immunity, have nothing to do with this case.

THE COURT: I disagree.

MR. ARONSON: If I may go into it --

THE COURT: You have gone far enough. You may have an appeal from Judge Weinfeld. His direction was for me to expedite this case. He didn't intend to spend one, two, three hours examining the witness. If he did --

MR. ARONSON: Are you limiting my examination?

THE COURT: I am.

MR. ARONSON: To what?

THE COURT: To a critical examination and now the manner in which you are doing it.

MR. ARONSON: I suggest if Mr. Lowenfeld can responsibly answer my questions --

THE COURT: He has responsibly answered your questions. He states the nature of this is estimate and it is a basis as to whether the estimate is reasonable under the circumstances. And frankly, for the record, I think the estimate is eminently reasonable.

MR. ARONSON: I disagree.

THE COURT: 252 hours on a case of this nature at $60 an hour is probably one-half of what a law firm in New York City of the calibre that should be called in on such a matter would be paid and I find some support in that the fact that his claim is something in the area of $15,000 and your client paid you $35,000.

MR. ARONSON: I submit that is irrelevant.

THE COURT: It is not irrelevant, counsel. Let us go on now. If you have examination in the manner suggested by Mr. Murray, I would entertain them. If you are going to take up each paragraph and ask him exactly how much time he spent on each one and to show him his diary, I will sustain the diary.

BY MR. ARONSON:

Q How many hours of the 30 hours were spent in relation to immunity; just a figure?

A I would say some portion of the 30 there, perhaps two-thirds of the 30, perhaps 20.

Q Do you think it could be any more?

A No.

Q I refer you to the third page of your June 4th letter, first paragraph, at the top. Twelfth paragraph

from the beginning. Did these services have any connection with the action of Aerotrade against Haiti in the Southern District of New York?

A Which paragraph?

Q The first paragraph on the top of page 3. It is the twelfth paragraph from the beginning.

A Yes, they did.

Q How? What services did you actually render?

A (No response.)

THE COURT: What were you trying to do when you were speaking to the officials of the United States Agency for International Development that had any connection with this case?

A General counsel or perhaps deputy counsel of AID called me to tell me that Aerotrade, then plaintiff, had filed suit in the District Court of the District of Columbia seeking to compel a cut-off of all foreign assistance to Haiti under the Foreign Assistance Act, Section 620(e), the so-called Hickenlooper Amendment, and on the basis of the fact that there had been an expropriation of the contract, counsel wanted to know what is this all about and I told him. And he said could he have copies of the papers? Argument? Where did the case stand? How soon could it be decided? Could he, for example, make

a motion in D.C. District Court to say that action pending decision by Judge Weinfeld? And that was the work I was doing there. Not very much work but that is what it was.

Q You spent three hours on that?

A Something like that.

Q You estimate three hours?

A Yes.

Q In connection with the second, page 3, thirteenth paragraph from the beginning, how much time did you spend studying the judgment Judge Weinfeld rendered in connection with Aerotrade against Banque Nationale?

A The statement says three hours. There were two judgments. There were other things to be done also; about three hours.

Q Three hours on just the judgment in connection with the action of Aerotrade against Banque Nationale?

THE COURT: It reads three hours for the statement of the judgment filed May 24, 1974 in favor of the Republic of Haiti and Banque Nationale. These are the opinions that came down the same day and are published in the Federal, page 376 and may I call your attention again to the fact that you are spending the time of this court on a matter which involves possibly

$90.

Q How much time did you spend regarding the decision?

THE COURT: Objection to same. Let's go on.

Q In connection with your disbursements of $619.80, can you allocate these disbursements to the hours that you entered for Haiti?

THE COURT: The disbursements weren't allocated for hours. Disbursements are allocated for expenses. He is not even entitled to give disbursements for an hour. A disbursement is something that he paid out of his pocket.

MR. ARONSON: I asked him whether he can.

THE COURT: Tell us about the disbursements.

A Somewhere in an earlier affidavit --

THE COURT: Which affidavit?

A I am trying to find it. The disbursements were primarily translations of documents in the principal action.

THE COURT: Here it is. It is in the supplemental affidavit dated April 22nd and it is a letter dated June 4, 1974 and it sets forth transportation, approximately $25; translation, approximately $80; telephones; approximately $97;

Xeroxing, $35; secretarial, $250; research assistants, $50; miscellaneous, $12. What do you want to ask him on disbursements?

MR. ARONSON: Whether he can allocate them as to the services he rendered to Haiti?

THE COURT: They are allocated.

MR. ARONSON: As to what the --

THE COURT: Objection sustained. This is becoming ludicrous. $620 and we are now spending the Court's time when you yourself agree that the amount is reasonable.

MR. ARONSON: I don't agree the disbursements are reasonable.

THE COURT: You don't agree that transportation to Washington of $94 is reasonable?

MR. ARONSON: Not if he went there to represent Banque Nationale?

THE COURT: He said when he went there on November 5th; his testimony was given when you examined him on it. You are nit-picking and that is all that you are coming down to. You are nit-picking on a couple of dollars as such. You mean you want him to tell you where he spent the $80 for translation when he said "Lawyers and

Merchant's Bureau, 11/28/73, $85"?

MR. ARONSON: If he can do it, I would like him to do it.

THE COURT: Objection sustained. This Court is not going to sit through a mockery of the process.

MR. ARONSON: I have no further questions.

MR. MURRAY: I have no further questions of Mr. Lowenfeld.

THE COURT: The witness is excused.

MR. MURRAY: The Association of Surety Companies of the State of New York have a regulated fee which they file with the Department of Insurance

THE COURT: I will not take judicial notice of it unless Mr. Lowenfeld agrees or I suggest you bring in a witness to --

MR. MURRAY: I am trying to expedite this. Mr. Wallach of my office has ascertained what the premiums are. I would like to call upon him --

THE COURT: He cannot do it; he is of your office.

MR. MURRAY: Perhaps Professor Lowenfeld will agree to it.

THE COURT: Ask him.

MR. MURRAY: Will you stipulate that the collaterized premium for an undertaking to discharge $867,000 in 1973 was $4,647.50?

MR. LOWENFELD: I haven't the foggiest idea what he's talking about. I certainly won't stipulate.

THE COURT: He is saying that your client could have mititgated damages by getting the amount that was a tached, $867,000, written off so there would not be the charges made against it by taking out an undertaking, which would have cost approximately, he says, $5,000 a year.

MR. MURRAY: Uncollaterized it's more, Judge.

THE COURT: I see your point but I don't see that as mitigation of damages. If someone is attached they can stay with that attachment.

MR. LOWENFELD: The notion of putting security in would, of course, be no advantage. I don'tknow if they could have gotten -- remember, this is a sovereign immunity case.

THE COURT: They would not only have to pay the fee, wouldn't they have to put up security?

MR. MURRAY: When I say a collaterized

$4,600, a non-collaterized, if it was accepted, would be $13,670 a year.

THE COURT: But there is no basis before this Court that they would have accepted a non-collaterized bond.

MR. MURRAY: Let us assume they would have not accepted a --

THE COURT: If they would accepted collaterized, then the Republic of Haiti would have been required to set up or to post securities of approximately what? $400,000, $500,000?

MR. MURRAY: Marketable securities, certificates of deposit, letters of credit.

THE COURT: Wouldn't that have cost them money because they could not use it?

MR. MURRAY: If you have a treasury bill, it is getting interest for you.

THE COURT: If you want to bring in a witness, fine.

MR. MURRAY: If you are not going to accept--

THE COURT: I will accept it as fact. I don't think, at this stage -- maybe you can convince me in your argument that an undertaking would have been mitigation of damages, particularly

if it were $400,000 a year over two years would have been for a year and a half --

MR. MURRAY: The detachment was for seven months and ten days.

THE COURT: It would have run over two years.

MR. MURRAY: Because the account was only attached --

THE COURT: I suggest for you the stronger argument was whether or not the Republic of Haiti's equitable determination is sufficient under the law of New York.

MR. MURRAY: That is already in the record. I am offering this further point to bolster my client's cause. Can we dispense, for the protection of the witness to show the witness or will your Honor accept word of Mr. Wallach and myself?

THE COURT: No, if Mr. Lowenfeld accepts it as a stipulation, that is fine. Otherwise, a witness who does write such bonds should come here and give testimony.

MR. MURRAY: I can get the Insurance Department to come down.

THE COURT: If you can, that is all right

with me. I am not trying to end the hearing.

MR. MURRAY: It is a matter of record with the State of New York Insurance Department.

THE COURT: I suggest whoever writes the bonds should be brought in and I will be happy to take the testimony. If you are saying the mitigation of damages should be limited to $5,000 or $13,000, it should be -- without a stipulation from counsel, I will not accept it.

MR. LOWENFELD: This is the first time I have heard of it.

THE COURT: I suggest if he does bring in a witness, it is going to be in a few days so you can prepare yourself as to those proposals that might arise in an undertaking status. You raised the question of sovereign immunity as one of them. I am not sure it is applicable but I will not make a ruling at this date. I will ask counsel if he wishes an adjourned date for one witness and I will accept that witness. Otherwise I will close the record.

MR. MURRAY: Judge, I would like to save the time of the Court.

THE COURT: I would too, but I can see

Mr. Lowenfeld would want the time to examine the issues as such.

MR. MURRAY: I would suggest, if your Honor was going to rule this is an issue of mitigation, first I could bring the witness down.

THE COURT: But the witness is not going to be Hartford Insurance. Someone who writes these bonds and can be properly cross-examined. Does Hartford write it?

MR. MURRAY: Yes.

THE COURT: But Hartford couldn't write it in this case. If you wish to bring someone down from Hartford --

MR. MURRAY: I would try to get someone from the Insurance Department or Association of Surety Companies here in New York.

THE COURT: I suggest you do so. Even if I decide against you on the point, it is a point of some issue as far as an appeal is concerned.

MR. MURRAY: Okay, Judge. Can we have an adjourned date but only with regard to this one witness on this one issue?

THE COURT: How much time would you need?

MR. MURRAY: I would say an hour.

THE COURT: Do you need a week to get a witness?

Does anyone object to having a hearing on Saturday?

MR. ARONSON: I have no objection.

MR. MURRAY: I do.

THE COURT: I will set it down for Thursday, January 29th at 3:00 p.m.

MR. MURRAY: Can I make this suggestion? If I can satisfy Professor Lowenfeld before that date that these were the premiums in effect for that type of insurance, perhaps we can stipulate an avoid this hearing.

MR. LOWENFELD: Let's put the time down.

THE COURT: You are permitted to talk with him and see if there can be some agreement but I must say it is an interesting argument because there are many attachments that go on. This is not the first case involving a suit on an attachment and I am not sure that the point has ever been raised that the party could have taken an alternative.

I assume any action taken by anyone has both advantages and disadvantages and there must be

some problems with undertakings, otherwise everyone would come up with an undertaking.

MR. MURRAY: They usually insist on full collateral unless the party involved is so financially stable and well known that they can relay on that party's integrity.

In this case, although I have no question about the financial integrity of the Republic of Haiti, I think they would probably have insisted on collateral if they would have written the undertaking.

THE COURT: You say there is no expense in putting up collateral?

MR. MURRAY: It could be a savings bank.

THE COURT: If you are putting up a savings bank book, weren't you in fact tying up that book? You can't do anything with it.

MR. MURRAY: That is right but you are earning the interest on the money.

THE COURT: You are prevented from using the money.

MR. MURRAY: But you are gaining interest. A certificate of deposit, a treasury bill, securite that you are going to hold anyway for a period of

time. If you have a thirty day treasury bill, you can put that in.

THE COURT: I recognize your sophistication in that area. Have you ever used that defense and it was accepted by the Court?

MR. MURRAY: I think it is the first time I have gone to a case and we have gone all the way down the line.

THE COURT: The Court will register a smile.

The fact that it has been raised now is not an objection to it. Counsel is suggesting that putting aside all the other problems, the Republic of Haiti could have avoided, whether it be their equitable or legal responsibility, approximately $20,000 or so of the $46,000, because that is all they are doing by using an alternative mitigation of damages.

As I indicated, there are problems that I see immediately by tying up collateral as well as any other problems, and I raise the question as to whether or not it would have any question on sovereign immunity. I am not sure it is so.

I welcome your oppotunity to enlighten the Court.

May the record note that as far as the Court is concerned on the issue of counsel fees, that I will not only reduce it by eight hours that has already been raised by the counsel for the Republic of Haiti who has, in effect, waived that claim which is the last part, but I also reduce it by the 32 hours which was in connection with the separate action. That brings it down to a total of 320 hours.

MR. MURRAY: That is $2,400 less.

THE COURT: $2,400 less than the original amount bringing the figure down, in effect, to $13,819.80 for legal fees and disbursements or whatever the mathematics comes out to and, in my Judgment, the only other remaining questions at hand are whether or not the difference between $30,000 and $13,819, which is approximately $21,191.21, that is the amount that the Republic of Haiti can recover, the most they could recover under the bond and with regard to that amount the issue still outstanding is 1: Was there a proper charge by the bank? 2: Was the Republic of Haiti responsible for such payments? 3: Could it have been mitigated and, if I find that the

amount in question was reasonable as far as an interest charge and that the Haitian Government had an obligation to make such payment even though it be, I assume, equitable obligation and mitigation was not in effect, then they would be entitled to the entire amount of $21,191.21. If, on the other hand, I find that the amounts charged are not reasonable or Haiti did not have any responsibility or could have been mitigated, the amount would be less if anything at all of that amount.

As far as legal fees, there is no question in my mind and I now find as a recommendation of this Court to Judge Weinfeld that the amount in question is reasonable except for the 40 hours which reduces the total by $2,400.

We will continue on January 29th at 3:30 p.m.

(Whereupon, at 1:45 p.m., the hearing was adjourned.)

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, PHYLLIS YENIS,
Notary Public within and for the State of New York, do hereby certify:

That the within is a true and accurate transcript of the proceedings taken on the 20th day of January, 1976.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 5 day of February, 1976.

Phyllis M. Yenis

HAITI'S EXHIBIT 1 IN EVIDENCE, JANUARY 20, 1976.

(Same as Supplemental Affidavit of Andreas F. Lowenfeld, dated November 19, 1975.)

HAITI'S EXHIBIT 2 IN EVIDENCE, JANUARY 20, 1976.

(Same as Letter, July 25, 1975, with translation annexed to Supplemental Affidavit of Andreas F. Lowenfeld, dated August 5, 1975.)

HAITI'S EXHIBIT 3 IN EVIDENCE, JANUARY 20, 1976.

(Same as Letter, July 25, 1975, with translation annexed to Supplemental Affidavit of Andreas F. Lowenfeld, dated August 5, 1975.)

223a

MINUTES OF EVIDENTIARY HEARING BEFORE MAGISTRATE
SOL SCHREIBER, JANUARY 29, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC. and AEROTRADE INTERNATIONAL, INC.,

Plaintiffs,

-against-

REPUBLIC OF HAITI,

Defendants.

73 Civ. 3587
Judge Weinfeld

United States District Court
Southern District of New York
Foley Square
New York, New York

January 29, 1976 - 3:55 p.m.

B E F O R E :

MAGISTRATE SOL SCHREIBER

BORAK REPORTING SERVICE, P.C.
CERTIFIED SHORTHAND REPORTERS
295 MADISON AVENUE
NEW YORK, N.Y. 10017
(212) 689-8080
NIGHT PHONES: (212) 475-1347
(516) 487-6474

A P P E A R A N C E S :

ANDREAS F. LOWENFELD, ESQ.
Attorney for Defendant
New York University
40 Washington Square South
New York, New York 10012

HENDLER & MURRAY, ESQS.
Attorneys for Hartford Accident and
Indemnity Co.
15 Park Row
New York, New York
BY: JEROME MURRAY, ESQ.
and
JASON WALLACH, ESQ.
of Counsel

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THE COURT: Let the record note that counsel for Aerotrade, Mr. Aronson, was advised of the adjourned date and has spoken to the Magistrate by phone on this date and has indicated that he does not feel any necessity to participate in the matters which will be taken up today, primarily that of the introduction of testimony concerning litigation of damages on the bond.

He has also been advised that he will hear from other counsel as to when final papers are to be submitted as such.

MR. MURRAY: If your Honor pleases, in addition to the previous argument that we made, upon which we are prepared to offer evidence through a witness in mitigation of the damages of the defendant, I would also like to bring to the Magistrate's attention Section 6221 of the New York CPLR, and it's a rather short section. I'd like to read it into the record if your Honor has no objection.

THE COURT: Go right ahead.

MR. MURRAY: Section 6221, "Proceeding to Determine Adverse Claim: Prior to the application of property or debt to the value of a judgment any interested person may commence a special proceeding againstthe plaintiff to determine the rights of adverse claimants to the property or debt by serving a notice of petition upon the Sheriff and upon each party in the same manner as a notice of motion. The proceeding may be commenced in the county where the property was levied upon or in the county where the order of

attachment is filed. The Court may vacate or discharge the attachment, void the levy, direct the disposition of the property or debt, direct that undertakings be provided or released, or direct that damages be awarded. Where there appear to be disputed questions of fact, the Court shall order a separate trial indicating the person who shall have possession of the property pending a decision, and the undertaking if any which such person shall give. If the Court determines that the adverse claim was fraudulent, it may require the claimant to pay the plaintiff the reasonable expenses incurred in the proceeding, including reasonable attorneys' fees and any other damages suffered by reason of the claim."

I respectfully submit, therefore, that there was a viable remedy to the bank with respect to the property which it claimed belonged to it, which was attached by the Sheriff; a separate remedy to such bank in accordance with Section 6221 and it could have substantially mitigated all of its claimed damages by a prompt resort to Section 6221 of the CPLR; and if your Honor pleases, we would like now to proceed.

THE COURT: Okay. May I also note that as I understand the reading that you've just given me, Section 6221 is not compulsory. It says "may" and therefore it raises a question as to whether or not it must be done that way or could be done some other way. I assume Professor Lowenfeld will brief the issue. You will in your papers obviously raise it, and he will respond to the applicability or non-applicability of Section 6221.

MR. MURRAY: In the respect that we have any liability or any interest; but if your Honor determines that it's finally determined that isn't a proper item of damage to the defendant in this case, I submit that either the defendant in our pending action or the bank could have brought a special proceeding quite quickly, and it could have been -- could have had a disposition as to whether or not the bank account was the proper subject of the attachment or not.

THE COURT: You mean after the matter was dismissed from the Court?

MR. MURRAY: No, no; immediately upon attachment it could have brought that proceeding.

THE COURT: Well, is there precedent vis-a-vis Federal actions that you can, not at this moment but subsequently, bring to the Court's attention where a Federal action is based on attachment? In effect, Section 6221 as utilized, there are many Federal actions based on attachment. What I'm saying is that the attachments usually last through the entire proceeding and then a hearing is held similar to the one we're now hearing. You're suggesting while the underlying claim was still before Judge Weinfeld, before he dismissed it, either the bank or the defendant, Professor Lowenfeld's clients, could have utilized Section 6221. What I'm asking is, is there any precedent in the Federal Court where such an action was used?

MR. MURRAY: Well, I can't give you a case, but I can refer you to Rule 64.

THE COURT: I know of Rule 64. I'm suggesting that it might be of greater use to us if there were some, unless this is a case of first impression.

MR. MURRAY: But we have not confronted whether the determination made by Judge Weinfeld

that the action was improperly commenced because of sovereign immunity and not because the attachment was not of the order of the defendant and there was no jurisdiction that could have been decided immediately.

THE COURT: Let's hold it for the legal aspects of the case. Let's take the witness now.

Mr. Cardi, wouldyou come forward please; and there's a chair right over here, sir.

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F R A N K C A R D I, having first been duly sworn by Magistrate Schreiber, was examined and testified as follows:

EXAMINATION BY
THE COURT:

Q What is your name?

A Frank Cardi.

Q You may sit, sir.

DIRECT EXAMINATION
BY MR. WALLACH:

Q Mr. Cardi, are you here pursuant to a subpoena?

A Yes.

Q Do you have it with you?

A Yes, I do.

(The witness provides the subpoena for Mr. Wallach's examination.)

MR. WALLACH: May we have this marked.

THE COURT: Okay, counsel.

Q Mr. Cardi, with whom are you employed, sir?

A New York State Department of Insurance.

THE COURT: Okay, do we know what number we're at? What number have we now reached, gentlemen?

MR. WALLACH: Number 2.

THE COURT: Defendant Hartford's Exhibit 2.

MR. WALLACH: Respondent, not defendant.

THE COURT: Respondent, I'm sorry. Is it 2? Well, let's name it 2. It's a copy of a subpoena.

(The document described above was marked in evidence as Respondent Hartford's Exhibit 2, this date.)

Q That is your address, Mr. Cardi?

A 23 Lexington Avenue

Q Thank you.

A New York City.

Q Where are you employed?

A Two World Trade Center.

Q By whom?

A By the New York State Department of Insurance.

Q Thank you. What is your capacity?

A I'm an insurance examiner.

Q What are your duties as an examiner?

A Review forms, rates for approval, experience and answer telephone calls.

Q How long have you been an examiner?

A Twenty-six years.

Q Thank you. Do you know what a release or discharge of attachment bond or undertaking is?

A Not as such. I know what it's supposed to be and what it's supposed to do and the premiums that are charged for it.

Q Could you tell me what it's supposed to do?

A I don't know whether this is for the record or not.

THE COURT: Everything is for the record from now on.

A According to the manual which is filed with the Department -- and this is the official manual, and I have extracted the pertinent material which you've requested.

(Witness produces the manual in question.)

Q Does that material tell us what a release of attachment bond is?

A Yes, it gives a short description of the scope of coverage.

Q Okay, could you read that for us?

THE COURT: Why don't we mark it for identification. Do you have a copy for Professor Lowenfeld?

THE WITNESS: No, I just brought one copy because I thought that's all that would be required.

THE COURT: Do you have the original of it?

THE WITNESS: Yes.

THE COURT: Why don't you gentlemen compare the photostatic copy with the original and see if there's any question in our using a copy.

When I say the original, what is that book you have there?

THE WITNESS: That's the official manual.

THE COURT: Okay. Would you read the title of the book, Professor Lowenfeld?

PROFESSOR LOWENFELD: It says, "Surety Association of America, 125 Maiden Lane." It doesn't look like a New York State Department manual.

THE WITNESS: It's filed with us.

THE COURT: It's filed with the Department?

THE WITNESS: Yes, sir.

THE COURT: Pursuant to regulation of the Department?

THE WITNESS: Pursuant to law.

THE COURT: All right.

PROFESSOR LOWENFELD: It certainly seems to be a Xerox. I don'tknow what else is before or after.

THE COURT: Let's mark it in evidence as Respondent Hartford's Exhibit 3 if there's no objection, and then I assume the matter will speak for itself. I'll make a copy for all counsel.)

(The document was marked in evidence as Respondent Hartford's Exhibit 3, this date.)

Q Mr. Cardi, do you know what a release of attachment bond does?

A Shall I read it?

THE COURT: No, don't read it.

A As far as I know, when a plaintiff attaches property of a defendant, there are proceedings for getting a release of whatever property has been attached by posting another bond.

Q Okay, thank you. Who writes such bonds,

releasing attachment bonds?

A Any authorized company which has provisions in their charter to write fidelity surety insurance.

Q I see, and what is the Surety Association?

A It's a rate-making organization, and it also acts as a statistical agent,

Q What does it consist of?

A It consists of an unincorporated association.

Q It's an association of surety companies?

A Yes, members and subscribers.

THE COURT: Who sets the rate for undertakings?

THE WITNESS: The rating organization on behalf of its members and subscribers. Otherwise, independents who take off from the association.

THE COURT: Do they file the rates with you?

THE WITNESS: Yes, sir.

Q Do you know, is collateral sometimes required for release of attachment bond?

A Yes, there's a collateral rule in the manual.

Q Is collateral sometimes not required?

THE COURT: Well counsel, the manual will speak for itself. Let's get the manual into

evidence.

A It's not required, but if it is there's a reduction in the rates charges.

THE COURT: What do you have? Can you refer us to any specific sections of the book dealing with the collateral?

THE WITNESS: Collateral? Yes sir.

Q Is that in that portion that you just gave us?

A It's in that portion there, yes.

PROFESSOR LOWENFELD: It's not in the portion that's marked, not on page CO 3.

THE WITNESS: Well, it's on page CF 12.

THE COURT: Do you have a copy of CF 12, counsel?

PROFESSOR LOWENFELD: Yes.

THE WITNESS: This was in effect in 1964. It was revised in 1975.

Q So that in --

THE COURT: Wait a second. Let the lawyer compare it with the original and see if it's a Xerox copy.

THE WITNESS: Well, I'm sorry. You'll need a superseded page for that.

PROFESSOR LOWENFELD: It does not seem to be quite the same. That says December 1964 and that says '75.

THE WITNESS: I told you it was revised. There is a superseded page here, CF 12.

THE COURT: Which is the one that was effective before 1975?

THE WITNESS: That one here.

THE COURT: The one that you made a photostatic copy of?

THE WITNESS: Yes.

MR. WALLACH: I'd like to offer page CF 12 of the same manual.

THE COURT: Respondent Hartford's Exhibit 4 in evidence.

(The document described above was marked as Respondent Hartford's Exhibit 4 in evidence, this date.)

Q Mr. Cardi, do you know what the premium rates were for issuing a release of attachment bond in 1973 and 1974?

A Yes sir.

Q Were these rates filed with the Department of Insurance?

A Yes, they were.

Q Were they filed pursuant to law?

A Pursuant to law, yes sir.

Q Thank you.

THE WITNESS: Here's a copy of CF 12A, which sets forth the rates for code 253, release of attachment bonds.

Q I see the code number 253. It represents what?

A For statistical purposes.

Q It's for statistical purposes?

PROFESSOR LOWENFELD: I don't mean to challenge you in any way, but I don't have an original of this. What is this a copy of?

THE WITNESS: CF 12A.

PROFESSOR LOWENFELD: I don't have that here or there.

THE WITNESS: Well, you didn't turn to it.

THE COURT: Please, Mr. Cardi, don't make any comments. Just suggest that he turn to it. Respondent Hartford's Exhibit 5 is marked in evidence.

(The document described above was marked in evidence as Respondent Hartford's Exhibit 5,

this date.)

Q Can you tell me what would have been the premium for a release of attachment bond with a fixed amount of $867,000 in 1973?

A I have tried to calculate the premium and I trust that my arithmetic is correct; but on my own calculations, without collateral --

Q With collateral.

THE COURT: Let him give it both ways.

A It would have been $13,670.

Q With the collateral?

A With the collateral rule it would have been $4,637.50.

Q How do you calculate?

A On the basis of the rates indicated on page 12A and the collateral rule.

THE COURT: What is the collateral rule?

THE WITNESS: That's when --

THE COURT: That's No. 1B and CF 12, is that it?

THE WITNESS: Yes sir.

THE COURT: All right.

THE WITNESS: When they deposit money with a surety or security.

Q Do you have any information or knowledge as to the number of release of attachment bonds that were written in the United States?

A No, I haven't.

Q Do you have any information concerning the amount of premiums?

A Yes.

Q (Continuing.) On release of attachment bond that were written in 1973-1974?

A Yes.

Q Okay, could you tell us?

A Off the record?

THE COURT: Okay.

(Discussion off the record.)

THE COURT: Mr. Cardi, can you estimate the number of bonds, undertaking bonds which were issued for charging attachments during the years 1973-1974?

A No sir, for the simple reason -- Off the record?

THE COURT: No, no; let's stay on the record. "For the simple reason"?

THE WITNESS: Because they reported by premiums earned.

Q Okay, do you know the premiums earned for

the year '73-74?

A Yes sir.

Q For undertakings, how much were the premiums earned?

A I can give you country-wide or New York State.

THE COURT: Give us New York State.

A In '73 there was $43,241 earned premium.

THE COURT: Forty-three thousand earned premium. Do you have any idea of how many undertakings that would cover?

THE WITNESS: No sir.

THE COURT: Do you have any idea what the amount of the attachments during the year 1973 consisted of?

THE WITNESS: No sir.

THE COURT: All right.

Q Mr. Cardi --

A In '74, there was $65,973 reported as earned premiums.

THE COURT: Mr. Cardi, if you say that the premiums would be approximately $13,670 for approximately 800,000 --

THE WITNESS: Eight hundred sixty-seven.

THE COURT: On uncollateralized?

THE WITNESS: Yes sir.

THE COURT: Then could we not estimate that if you would multiply that by the number three you would approximately reach close to forty-three thousand, and would that not lead us to a figure of approximately two and a half million of uncollateralized undertakings in lieu of --

THE WITNESS: It would be an assumption. We don't know whether they were collateralized or written statements.

MR. WALLACH: If I may, I believe we can calculate a minimum amount of the amounts of attachments released by those bonds.

THE COURT: Counsel, is there any dispute that the amount of undertakings would be a very low percentage of the amount of attachments made in New York?

MR. WALLACH: None; the amount of attachments -- well, it's not suggested that attachments only led to two million dollars during a full calendar year.

THE COURT: Well, I suggest you might find out because otherwise the figures are really not

sufficent for the court to make a determination as to whether undertakings are used consistently. What you're saying to me in the proof that you've now given me is that in the year '73, $43,000 was the premiums collected for undertakings in the State of New York. Now whether we use 13,000 for collateralized or 13,000 for uncollateralized, we know that's the amount for 800, approximately 850,000. What we don't know and what I'm asking you to supply me with is the amount of attachments during the year 1973 so the court can see whether or not undertakings are commonly used or are seldom used.

MR. MURRAY: Your Honor, we're just attempting to show the court that there was a vehicle to mitigate the damages; the statute --

THE COURT: Counsel, I'm asking you, however is it a vehicle that is customarily used, and the only way to determine that is to know the amount in question.

MR. MURRAY: Your Honor, we are showing you that it is a vehicle which could have been used by the defendant in this action had it so desired.

THE COURT: Now, let me go off the record.

(Discussion off the record.)

THE COURT: How much were the attached bonds during the year 1973?

Tape #2

THE WITNESS: $194,000.

THE COURT: Attached?

THE WITNESS: Yes.

THE COURT: What is that for?

THE WITNESS: Attachment bonds, and $55,000 was for the release of the attachment.

THE COURT: You mean that in the State of New York only $194,000 worth of bonds were only -- tha only the amount attached was $194,000?

THE WITNESS: Premiums.

THE COURT: What would a $194,000 premium cover, approximately?

THE WITNESS: Who can say.

THE COURT: Estimate. Well, is the premium ten percent, twenty percent?

THE WITNESS: The premiums could be double. It all depends on the collateral if they do deposit it and everything.

THE COURT: I see. All right, go ahead.

MR. MURRAY: Just one more question. The premiums that you mentioned for the release of

attachment bond, was that for a year, one year?

THE WITNESS: Premiums earned, yes sir, one year.

MR. MURRAY: And if the period is less than a year, is there a rebate of any portion of the unearned premium?

THE WITNESS: No sir.

THE COURT: Okay, next question counsel.

MR. MURRAY: I have no more questions.

THE COURT: Good. Okay, Professor Lowenfeld.

PROFESSOR LOWENFELD: Mr. Cardi, I just have a very few questions.

THE WITNESS: Yes sir.

EXAMINATION BY

PROFESSOR LOWENFELD:

Q First, you've testified that insurance and bonding companies licensed in this state are authorized to issue release of attachment bonds?

A Not all, no; only the companies which in their license powers include the authority to write fidelity surety, which is one of the lines of insurance authorized to be written in this state.

Q But there are some companies which are so authorized?

A Oh, yes.

Q Is there any obligation on such companies to issue these bonds?

A No, they can be licensed to do this business, but they're not compelled to exercise their charter rights or license powers.

Q Now you've appeared here, I understand, as an expert on these release of attachment bonds?

A No, I was here to produce the records.

THE COURT: He has appeared as a factual witness to give us the records in the possession of the Insurance Department.

Q But you've stated that you've been an examiner in this Department for 20-odd years?

A Twenty-six.

Q Twenty-six years, excuse me. Do you have knowledge of any release of attachment bonds similar to the one you've described ever obtained by foreign sovereign governments?

A No sir.

Q Do you have any knowledge of how an insurance company that had issued such a bond might seek to recoup losses from the foreign sovereign if it were required to pay out on the bond?

A No sir.

Q Do you suppose that a sovereign immunity might be a problem?

A I am aware of that term, "sovereign immunity."

Q Do you have any knowledge or opinion on what kind of collateral might be required before an insurance company would issue a bond to a foreign sovereign or on behalf of a sovereign?

A Well, in the collateral rule it spells out the kind of security that the company receives or will obtain.

Q To the best of your knowledge, if an insurance company licensed to do the business you described were to be requested to issue such a bond, do you suppose the insurance company would require -- would inquire about an internal law of the government making the request?

A Not to my knowledge, no sir.

Q You don't know whether it would or it wouldn't?

A No, I've never seen anything like it.

Q You've never seen anything like that?

A No.

Q I don't suppose you know anything about the law of Haiti?

A No sir.

Q I was about to ask, but perhaps I won't ask the last question, which was --

THE COURT: No, don't. If you're not going to ask it, we don't want to hear it.

PROFESSOR LOWENFELD: I have no further questions, but I'd like to move your Honor --

THE COURT: Well, if you have no further questions, I will discharge the witness.

Mr. Cardi, thank you for coming. Now counsel.

PROFESSOR LOWENFELD: I was just going to say that I'm prepared to stipulate as to the rate schedule presented by Mr. Cardi, but I'd like to move that all of the testimony which we've just heard be stricken since no connection has been drawn between the institution of bonding back and either its availability to foreign sovereigns or its permissibility under the laws of Haiti; and indeed the witness himself said he'd never heard of one.

THE COURT: Well, counsel, I have taken the evidence for what it's worth. As such, it's obvious that Mr. Cardi has been brought here so he could present to us the official records of

the Department of Insurance by way of Exhibits 3, 4 and 5 that respondent Hartford has put in evidence, and those are the only matters which he's basically testified to, isn't that correct?

MR. MURRAY: Yes, but your Honor I respectfully submit that we have already shown to the Court that there was a means by which the defedant could have mitigated damages. Now if the defendant attempts or wishes to tell this Court that it could not have mitigated damages because it was a foreign country, it will have to come forward with evidence on its part to establish that no surety company would have written that bond.

THE COURT: Counsel, we will hold for the post-trial briefs the question as to whether or not a sufficient showing has been made by defendant that there was a vehicle that could have been utilized, that is the vehicle of an undertaking, and that it was -- it would have been a feasible manner of proceeding. I had thought during the last hearing that we were to get a witness -- at least it was my understanding, and I apologize if I am wrong -- but I thought, it was my understandin that you were going to bring in a witness from the

Insurance Company who writes undertakings; who, when given the information concerning the attachments here, would in his opinion have so stated that such an undertaking could have been written and the manner in which it would be done; but what we do have is your position that in New York there is a vehicle called an undertaking to institute for attachments; that there are various statements concerning such undertakings which are filed, including rates, which are filed with the New York Department of Insurance. That still does leave open a question and whether or not it's your responsibility or Mr. Lowenfeld's responsibility to have shown that it could be done in this particular case or could not, we'll leave for the trier of the facts; that is, me.

MR. MURRAY: Let me just leave your Honor with this thought, and that is: it is contrary to the law of this country and contrary to the law of this state for any insurance company to discriminate against the writing of insurance for any particular applicant.

THE COURT: But counsel, wouldn't it have satisified your position more accurately if an

expert were presented who, when given the hypothetical of the facts which underlie, which served as the basis of the original attachment; when given a hypothetical question or when asked in his professional opinion would his company have written such a bond and if so what collateral if any would be required and also what the cost with or without collateral, isn't that the appropriate way of showing that there was an alternative? All that has been shown to the Court at this moment is a statement that New York does provide a vehicle of an undertaking and that there are such rates.

MR. MURRAY: I tell you I don't think that that's the way --

THE COURT: Mr. Lowenfeld has raised a question which still hangs up in the air; what would an insurance company have done if they had been told that this is an issue of sovereign immunity? Would they have required that the foreign sovereign nation post an amount equal to the $830,000?

MR. MURRAY: And if it did, it could have been a certificate of deposit; it could have been some interest-bearing instrument.

THE COURT: What would the cost of that be?

MR. MURRAY: The cost of that undertaking would be about $4,000, a little over $4,000.

THE COURT: What undertaking? But what would the cost of placing the collateral of approximately a million dollars in the hands of an insurance company cost the foreign nation?

MR. MURRAY: The very reason that you're asking that question is because it's impossible of answer. I have attempted and we have attempted to determine from various insurance underwriters whether or not they would have written such a bond.

THE COURT: You can't make testimony, counsel. If you --

MR. MURRAY: I'm not trying to.

THE COURT: You're now getting into testimony. You're going to tell me what you've attempted to do. A witness should be doing that, not you.

MR. MURRAY: You asked me why I didn't do it this way, and I'm telling you that I thought that perhaps I might attempt to do it this way; but the information provided to me would be that it was and would be impossible to determine how

one would react back in 1973 in a situation such as this.

THE COURT: So if it's impossible to determine, how could the court say that should have been applied?

MR. MURRAY: Because it's very, very clear that such a vehicle was available, and there's been no proof that it was not available to the Republic of Haiti; and it's up to defendant to establish it wasn't available.

THE COURT: I have not fully made up my mind, but I tend to feel that even if there was an undertaking approach, that is only an alternative to the matter. I will read your papers. I assume it will be briefed as such, but it seems to me that the underlying question in this case in my judgment is, as I mentioned before, did the Republic of Haiti -- were they under any obligation to pay the bank, and was the amount charged -- (a) was the Republic of Haiti under any obligation to pay, and if so, (b) was the amount that the bank was charged a reasonable one under all circumstances. You asked that the court also consider whether or not there should not have been the use

of an undertaking as an alternative. I will take that under advisement too.

MR. MURRAY: All right, Judge. With respect to additional documents or memoranda, I believe we've covered all of it.

THE COURT: No, counsel, I do not. I believe now is the appropriate time to take the transcript and submit to me findings of facts and conclusions based on the transcript. This is a customary way this court reacts. Now one of the matters of issue was the rates by the way; and I cannot do it, but I want you to speak to Mr. Aronson -- he's not here -- to see whether or not the issue of the counsel fees -- that is the amount in question which the court found at our last hearing to be approximately $13,000 -- is going to be a matter that's going to be disputed by any of the parties. If it is, then I want that briefed under the applicable law as set forth by the Second Circuit in the District Courts. If it is not, then it's going to be accepted as reasonable; then it doesn't have to be briefed.

MR. MURRAY: I cannot speak for Mr. Aronson. I can tell you on behalf of my client whom I

represent, and the only party I represent here, we have not challenged the hourly rate of $60 as being unreasonable, and we will not challenge any hours that your Honor has found; and I do not challenge your finding as to that sum.

THE COURT: I want you to ask Mr. Aronson if he does challenge it. If he does not, then none of the attorneys need deal with that issue and Mr. Lowenfeld's client is entitled to that amount. There's no doubt on that, is there?

MR. MURRAY: As far as our client's undertaking is concerned, I think it's covered.

THE COURT: Okay. If Mr. Aronson, however, says he wishes to challenge it?

MR. MURRAY: I cannot concede that because you realize I have an adversary, your Honor. We have an adversary proceeding against our indemnitors I cannot possibly concede any amount that is claimed as being reasonable and then expect to get it back from our indemnitors on a concession. I do advise your Honor that I believe --

THE COURT: I'm asking you this.

MR. MURRAY: I believe that the amount your Honor has found to be fair and reasonable.

THE COURT: If Mr. Aronson doesn't challenge it, I take it you don't challenge it either as such?

MR. MURRAY: I'm not going to contest your Honor's findings.

THE COURT: You ask Mr. Aronson whether he is going to contest that particular finding. The major finding, and that is the difference between $35,000 and $13,000 approximately, which is approximately $22,000, will depend upon a number of factors. One is, is the Republic of Haiti--were they obliged or responsible to assume the obligation of the bank, and if so was the amount of $22,000 which is the remainder reasonable in light of the interest charges which came to about sixty, and also in light of your argument that there was an alternative undertaking approach.

MR. MURRAY: And also Section 6221.

THE COURT: Okay, but I want 6221 briefed, and I want the other matters briefed; and I will set up a very tight schedule. I want it briefed within two weeks of the receipt of the transcript. This matter ought to end sooner or later. If I do not get briefs, I will consider that the parties

have waived the issue.

PROFESSOR LOWENFELD: Your Honor, my only question is, there were some documents that there weren't copies of.

THE COURT: I'll make copies right now.

(Whereupon, at 4:35 p.m., the hearing was adjourned sine die.)

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, DAVID L. HERANNEY,
Notary Public within and for the State of New York, do hereby certify:

That the within is a true and accurate transcript of the proceedings taken on the 29th day of January, 1976.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of February, 1976.

David L. Heranney

HARTFORD'S EXHIBIT 4 IN EVIDENCE, JANUARY 29, 1976.

CF-12 Revised December 7, 1964

Court Bonds—Judicial Proceedings
General Rates

1. The scale of maximum rates for collateralized court bonds in Judicial proceedings, as given on this page, is subject to the following Definition and Rule:

1a. COLLATERAL DEFINED:—Cash, Certified Checks or Checks drawn by Banks, Bank Certificates of Deposit, assigned Bank Savings Accounts or Savings Accounts in Building, Saving and Loan Associations, Cooperative Banks in Massachusetts or Homestead Associations in Louisiana; assignments of cash values of Life Insurance Policies and Irrevocable Commercial Bank letters of Credit, payable on demand of the Surety.

★ U. S. Government Bonds, Treasury notes and other obligations guaranteed as to principal and interest by the U. S. Government, Public Housing Authority Bonds, bonds of any State, County, Municipality or Subdivision thereof in the U.S.A., with a current rating in Moody's of Baa or higher or Standard & Poor's of BBB or higher and bonds of domestic private corporations listed on the New York Stock Exchange and with a current rating in Moody's of Baa or higher or Standard & Poor's of BBB or higher, preferred stocks of domestic private corporations listed on the New York Stock Exchange or the American Stock Exchange having a Standard & Poor's current rating of A or higher and common stocks of domestic private corporations listed on the New York Stock Exchange or American Stock Exchange with a current rating in Standard & Poor's of A- or higher.

1b. COLLATERAL RULE: Where the annual premium for any bond (except a Bail Bond) listed on pp-CF-1 to CF-17 in the Court Bond section of the Manual exceeds **$25.00** and applicant deposits with the Surety Company collateral as defined above *to the full amount of the Surety's liability* (partial collateral does not entitle any risk to a proportionate rate reduction), the following Scale of Maximum Rates applies as to amount of judgment, amount in controversy or penalty of bond, whichever is applicable, when such scale produces a lesser premium than otherwise chargeable.

SCALE OF MAXIMUM RATES FOR COLLATERALIZED BONDS

1c.

AMOUNT	Per M Per Annum
Up to $25,000.	**$10.00**
$ 25,000—**$250** and for each add'l M to $100,000	**7.50**
$ 100,000—**$812.50** " " " " M to $1,000,000	**5.00**
$1,000,000—**$5312.50** " " " " M	**2.50**

Annual minimum **$25.00**

HARTFORD'S EXHIBIT 5 IN EVIDENCE, JANUARY 29, 1976.

Revised December 7, 1964

CF-12(a)

Court Bonds—Judicial Proceedings

General Rates

1. ***Fixed Penalty Bonds.***

2. APPEAL (▲ 257) SUPERSEDEAS
OPEN DEFAULT STAY OF EXECUTION
STAY ADMINISTRATOR'S ORDER—FEDERAL FAIR LABOR ACT OR SIMILAR STATE STATUTE

If judgment is for a sum of money:

★ Apply following scale on full amount of judgment including interest allowed therein:

	Per M Per Annum
Up to $250,000.	$20.00
$250,000.—**$5,000.** and for each additional M to $750,000.	15.00
$750,000.—**$12,500.** and for each additional M to $1,500,000.	10.00
$1,500,000.—**$20,000.** and for each additional M to $2,500,000.	5.00
$2,500,000.—**$25,000.** and for each additional M	2.00

If judgment is for other than a sum of money:
Apply foregoing scale of rates on penalty of bond.

3. COUNTER REPLEVIN (▲ 254) FORTHCOMING (▲ 254)
DISCHARGE ATTACHMENT (▲ 253) INJUNCTION (▲ 255)
DISSOLVE INJUCTION (▲ 255) REDELIVERY (▲ 254)
DISCHARGE MECHANIC'S LIEN (▲ 260)
RELEASE OF GARNISHMENT (▲ 253)

★ Apply foregoing scale of rates on penalty of bond.

Where contractor has posted Performance and Payment bonds covering the contract against which liens are filed, reduce rate for Release or Discharge of Mechanic's Lien bonds 50%.

MAGISTRATE SCHREIBER'S RECOMMENDATION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC. AND AEROTRADE INTERNATIONAL, INC. Plaintiffs, -against- REPUBLIC OF HAITI Defendant.	73 Civ. 3587 (EW) MAGISTRATE'S RECOMMENDATION

Plaintiffs, Aerotrade, Inc. and Aerotrade International, Inc. (Aerotrade) brought an action against defendant - Republic of Haiti (Haiti) seeking damages for an alleged breach of contract. Pursuant to the applicable statute - New York Civil Practice Law and Rules § 6201 (McKinney 1963) - an order of attachment was issued by this court. The order directed the United States Marshal to levy upon "any and all bank accounts or other property which exist in the name of Banque Nationale de la Republique d'Haiti" (Banque) in the amount of $867,000. Aerotrade was required to post an undertaking and secured a Bond in the amount of $40,000. Of this, $5,000 was to secure the fees and expenses of the United States Marshal, and the balance of $35,000 was to protect Haiti from damages sustained by it by reason of the attachment. The Bond reads in pertinent part:

> ... the Hartford Accident and Indemnity Company ... shall pay to the Defendant, Republic of Haiti, all legal costs and damages which may be sustained by reason of the attachment if the Defendant, Republic of Haiti recovers judgment or it is finally decided that the Plaintiffs, Aerotrade, Inc., and Aerotrade International, Inc., were not entitled to an attachment of the Defendant's, Republic of Haiti, property ....

The action was subsequently dismissed on the ground of sovereign immunity

and the attachment was vacated. Aerotrade, Inc. v. Republic of Haiti, 376 F. Supp. 1281 (S.D.N.Y. 1974).

The present motion made under Fed. R. Civ. P. 65.1, seeks a recovery under the terms of the Bond for damages allegedly sustained by Haiti. The motion was referred to the Undersigned for hearing and disposition by the Honorable Edward Weinfeld of this Court.

An initial issue that must be raised is the question of whose property was the subject of the attachment. The damages sought by Haiti include interest charges on overdrafts on the account of Banque at First National City Bank (FNCB). These interest charges resulted from the fact that Banque was deprived of the use of $867,000 of its funds by virtue of the attachment. Since interest charges are the type of damages recoverable under the Bond, Subin v. United States Fidelity & Guaranty Co., 12 App. Div. 2d 49, 208 N.Y.S. 2d 278 (1st Dep't 1960), Haiti may recover if the interest charges accrued on funds belonging to Haiti. However, there is no contention that the money which was attached was not Haiti's, but rather it belonged to Banque. Affidavits of Andre, October 31, 1973, at ¶ 5, July 29, 1975; Transcript p. 62. Therefore, Haiti may not recover for these interest charges under these circumstances.

Haiti's contention that the terms of the Bond allow it to recover regardless of whose property was in fact attached is wholly untenable. No cases can be found, nor has Haiti cited to the court any cases supporting such a contention. On the contrary, cases which allow recovery to a defendant, do so on the basis of the fact that the defendant has been damaged by having its property attached. See, e.g., N.V. Transandine Handelmaatschappij v. Massachusetts Bonding & Insurance Co., 181 Misc., 202, 40 N.Y.S. 2d 499 (Sup. Ct. 1943); Dinnerstein

MAGISTRATE SCHREIBER'S RECOMMENDATION

v. Max's Gas Station, Inc., 172 Misc. 27, 13 N.Y.S. 2d 1014 (Sup. Ct. 1934).

Further analysis indicates that Haiti might still be entitled to recovery. If Banque and Haiti are one and the same, then even though the funds attached were in the account of Banque at FNCB, Haiti would nevertheless be affected by the attachment and damaged thereby. This identity of interest, however, is not borne out by the facts. Affidavits submitted in this case indicate that Banque is an entity separate from the Government of Haiti and is not an "alter ego" of the Government of Haiti.[1/] Affidavit of Andre, October 31, 1973 at ¶ 4; Affidavit of Sylvain, February 28, 1974 at ¶ 2. See also Plesch v. Banque Nationale de la Republique d'Haiti, 273 App. Div. 224, 77 N.Y.S. 2d 43 (1st Dep't), aff'd, 298 N.Y. 573, 81 N.E. 2d 106 (1948).

There is still a third possible circumstance under which Haiti might recover under the Bond. While it was Banque's account at FNCB that was the subject of the attachment, as the facts now present themselves, Banque was reimbursed by Haiti on July 25, 1975[2/] for the damages sustained

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(1) In the original action, Haiti argued for dismissal on grounds of both sovereign immunity and lack of quasi in rem jurisdiction because Banque was a separate and distinct entity and the funds of Banque were attached. The court dismissed on the ground of sovereign immunity, but did not deal with the issue of whether quasi in rem jurisdiction was in fact present. It seems that at this juncture, however, Haiti has attempted to take an inconsistent position, by arguing a "unique and complex" relationship between Banque and the Government of Haiti. Yet no tangible evidence has been set forth clarifying this relationship. Therefore, the court is led to conclude that whatever the precise nature of the relationship might be, it is not of such character as to render Banque and Haiti an identity for purposes of this motion.

(2) The court notes that this date was some fourteen months after the order of attachment was vacated by this court in its decision dismissing the underlying action. Aerotrade, Inc. v. Republic of Haiti, 376 F. Supp. 1281 (S.D.N.Y. 1974).

by Banque as a result of the interest charges. The basis of this payment by Haiti must be determined, for if it were a legal obligation, this court would be free to allow recovery to Haiti under the Bond. However, Haiti's obligation was merely equitable. Transcript at 49. There was no written agreement requiring reimbursement by Haiti. Id. at 50. Moreover, whether this moral obligation was in any way enforceable against Haiti is mere conjecture. While Banque might have gone to court in Haiti seeking to enforce Haiti's obligation to pay, Id. at 58, in the absence of an actual payment, the eventual outcome of such a suit need not be of concern to this court. No evidence is forthcoming at present to indicate any legal obligation enforceable by this court.

A moral obligation, undertaken as here without consideration, cannot support a claim by Haiti for damages in the amount of Haiti's payment to Banque. See, e.g., Coyne v. Campbell, 11 N.Y. 2d 372, 183 N.E. 2d 891, 230 N.Y.S. 2d 1 (1962).

The court therefore concludes that the interest charges sustained by Banque as a result of the attachment are not recoverable under the Bond by Haiti.[3/]

There remains for consideration the amount, if any, of Haiti's attorney's fees that are recoverable under the Bond. As a general rule, attorney's fees are recoverable in the present type of action. Maglificio Italiano DiZironi Incerti Valintina v. Fidelity & Deposit Co., 35 App. Div. 2d 517, 312 N.Y.S. 2d 113 (1st Dep't 1970).

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(3) The court's decision makes it unnecessary to reach the issue of whether Haiti or Banque was under a duty to mitigate damages flowing from the attachment, and if so, to what extent.

MAGISTRATE SCHREIBER'S RECOMMENDATION

Haiti is entitled to legal fees which flow naturally and proximately from the attachment. Plessner v. Continental Cas. Co., 25 Misc. 2d 518, 82 N.Y.S. 2d 540 (Sup. Ct. 1948). Such fees include, without question, those incurred in the actual vacation of the attachment. Thropp v. Erb, 255 N.Y. 75, 174 N.E. 67 (1930). Counsel for Haiti has indicated that Haiti was charged at an hourly rate of $60 for his services. Both sides concede that this rate is reasonable. Transcript at 80-81.

Counsel submits a total of 252 hours spent in the defense of Haiti arising from the attachment. Of these, 32 hours were spent in the defense of Banque from an attempt to maintain a separate action against Banque based on an attachment. Supplemental Affidavit of Lowenfeld, November 19, 1975; Transcript at 81-82. These hours are not the proximate result of the attachment - the defense of Banque is not the defense of Haiti. In addition, three hours spent concerning the suspension of United States' foreign assistance to Haiti clearly are independent of any time spent in vacating the attachment. Transcript at 91-92. Finally, counsel for Haiti submits 30 hours, 20 of which were spent in the study of the possibilities of a plea of sovereign immunity to the State Department. Supplemental Affidavit of Lowenfeld, November 19, 1975; Transcript at 90. Aerotrade, in its Post-Hearing Reply Memorandum appears to challenge only these 20 hours as not recoverable. It is clear, however, that such a plea to the State Department was merely an alternative method of seeking to vacate the attachment, and therefore legal fees for that time are recoverable.

Mathematical computation results in a finding that of the total of 252 hours, 217 hours were proximately spent in attempting to vacate the attachment. At a rate of $60 per hour, this entitles Haiti to recover $13,020 in expended legal fees under the bond.

MAGISTRATE SCHREIBER'S RECOMMENDATION

In addition to these legal fees, Haiti was also charged for disbursements by its counsel in the amount of $619.80. No evidence has been offered to indicate how much of these disbursements were related to the total of 217 hours recoverable by Haiti. Since Haiti has not itemized these expenses, the court finds it reasonable to assume that these expenses were incurred in the same ratio as were the allowable legal fees with respect to the total hours spent by Haiti's counsel. The court has found that 217 of the 252 hours are compensable; this is a percentage of 86%. Applying this to the total of $619.80 in disbursements, the court finds Haiti may recover $533.03. The total recovery to Haiti is thus $13,553.03.

This total does not include the sum of $3,550 which were legal fees incurred in the present motion to recover under the Bond. Such fees are not proper. Doyle v. Allstate Insurance Co., 1 N.Y. 2d 439, 136 N.E. 2d 484, 154 N.Y.S. 2d 10 (1956).

Respectfully submitted,

SOL SCHREIBER
U.S. Magistrate

Dated: New York, New York
June 9, 1976

JUDGE WEINFELD'S OPINION GRANTING MOTION UNDER RULE 65.1.

DISTRICT COURT

DISTRICT OF NEW YORK

- x

AEROTRADE, INC. AND AEROTRADE INTERNATIONAL, INC.,

Plaintiffs,

-against-

REPUBLIC OF HAITI,

Defendant.

- x

73 Civil 3587

OPINION

44775

REGAN GOLDFARB HELLER WETZLER & QUINN, ESQS.
445 Park Avenue
New York, New York

Attorneys for Plaintiffs

HOWARD BREINDEL, ESQ.
ROBERT ARONSON, ESQ.
Of Counsel

ANDREAS F. LOWENFELD, ESQ.
40 Washington Square South
New York, New York

Attorney for Defendant

HENDLER & MURRAY, ESQS.
15 Park Row
New York, New York

Attorneys for Hartford Accident and Indemnity Company

JEROME MURRAY, ESQ.
JASON WALLACH, ESQ.
Of Counsel

JUDGE WEINFELD'S OPINION GRANTING MOTION UNDER RULE 65.1

EDWARD WEINFELD, D. J.

Plaintiffs applied for and were granted an attachment on October 5, 1973 against the funds on deposit at the First National City Bank ("Citibank") to the credit of Banque Nationale de la Republique d'Haiti ("Banque") on the ground that Banque was wholly owned by and the alter ego of the defendant Republic of Haiti ("Haiti"). Pursuant to the attachment the funds were levied upon and Citibank delivered out of Banque's account $867,000 to the United States Marshal; in addition, in accordance with its established policy when a depositor's account is attached, it segregated an overrun of $216,750. Thereafter, on May 24, 1974, this Court vacated the attachment upon Haiti's plea that it was entitled to sovereign immunity with respect to plaintiffs' claim which involved military procurement for Haiti's air, land and naval forces.(1)

The plaintiffs, to obtain the attachment, filed an undertaking as required by an order of this Court pursuant to the New York Attachment Law,(2) of which $35,000 was to secure

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(1) Aerotrade, Inc. v. Republic of Haiti, 376 F. Supp. 1281 (S.D.N.Y. 1974).

(2) N.Y.C.P.L.R. § 6212(b). Jurisdiction was based on diversity.

JUDGE WEINFELD'S OPINION GRANTING MOTION UNDER RULE 65.1

payment of Haiti's legal costs and damages for which plaintiffs would be liable in the event the attachment were vacated. Upon Haiti's motion to enforce the terms of the undertaking against Hartford Accident and Indemnity Co. ("Hartford"), the matter was referred to Magistrate Schreiber to hear and report as to the amount due to Haiti.

The matter is now before the Court on the report of the Magistrate, who recommended that Haiti was entitled to reimbursement in the sum of $13,553 for counsel fees and disbursements incurred in connection with the attachment. However, the Magistrate rejected Haiti's further claim for damages for the sum paid by it to Banque representing interest charges made against Banque for overdrafts on Banque's account at Citibank on the ground that Haiti was under no legal obligation to reimburse Banque for the interest charges.

The withdrawal of more than $1,000,000 from Banque's account by reason of the attachment so depleted the account that it necessitated the issuance of overdrafts. Under a prior arrangement between Banque and Citibank, overdrafts were permitted but Banque was required to pay and in the instant situation did pay interest on the overdrafts during the period the attachment remained in effect. Those interest charges were a

direct consequence of the attachment against Haiti based upon plaintiffs' claim that Banque was the alter ego of Haiti.

The record establishes that not only did Haiti agree to reimburse Banque for the interest charges, but also that under the law of Haiti, Banque could have sued to recover such interest charges. The fact that Haiti's agreement to reimburse Banque was not in writing at the date of the attachment is immaterial; there is no requirement that such obligation be written. So, too, it is immaterial that Banque may have a separate and independent claim against plaintiffs based upon an improper attachment of its funds.

Since the interest charges paid by Haiti to Banque were a direct consequence of the withdrawal from and the depletion of its account by reason of the attachment against Haiti, Haiti is entitled to recover the sums so paid as damages under the terms of the undertaking in its favor.

Haiti seeks to have the matter re-referred to the Magistrate on the issue of mitigation of damages. However, were the interest rate substantially reduced (even at six per cent per annum), the undertaking would still be insufficient to meet the interest obligation over and above $13,553,

the amount allowed for legal fees. Hartford's further argument that Haiti was obliged to have effected a discharge of the attachment and thereby mitigated damages by giving an undertaking in an amount equal to the attached funds pursuant to section 6222 of the New York Attachment Law[3] is without substance. That section is permissive and not mandatory; moreover, to furnish an undertaking would require the payment of a premium, and in view of the amount of the claim would probably require the posting of a fund equal to the amount attached.

Haiti is entitled to recover, in addition to the counsel fees, the interest it paid to Banque, but only on the sum of $867,000 and for the period from the date of the levy upon Banque's funds, that is, October 5, 1973 to June 10, 1974, when the Marshal returned the $867,000 to Citibank.

Judgment may be entered accordingly.

Dated: New York, N. Y.
July 16, 1976

EDWARD WEINFELD
United States District Judge

(3) N.Y.C.P.L.R. § 6222.

JUDGMENT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEROTRADE, INC., AND AEROTRADE INTERNATIONAL, INC.,	:	Civ. 73-3587 EW
Plaintiffs,	:	
-against-	:	Judgment on Motion under Rule 65.1
REPUBLIC OF HAITI,	:	# 76,792
Defendant.	:	

This motion came on for hearing before the Court, Honorable Edward Weinfeld, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered on July 16, 1976,

It is Ordered and Adjudged

that the Defendant Republic of Haiti recover of the Respondent Hartford Accident and Indemnity Company the sum of $35,000, representing the full amount of the bond given by the respondent, plus interest thereon at the rate of 6 per cent as provided by law from June 11, 1974 to August 23, 1976 for a total sum of $39,625.75.

Dated at New York, New York this 25 day of August 1976.

Edward Weinfeld
U.S.D.J.

ENTERED- 8/30/76
CLERK

To: Hartford Accident and Indemnity Company
c/o Hendler & Murray, Esqs.
15 Park Row
New York, New York 10038

Aerotrade, Inc., and Aerotrade International, Inc.
c/o Regan Goldfarb Heller Wetzler & Quinn, Esqs.
445 Park Avenue

United States Court of Appellas
For the Second Circuit

375—Affidavit of Service — The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

~~NEW YORK SUPREME COURT APPELLATE DIVISION DEPARTMENT~~

Aerotrade Inc., & Aerotrade International Inc.,

Plaintiff

against

Republic of Haiti

Defendant-Appellee

against

Hartford Accident & Indemnity Company

Appellant

On appeal from the United States District Court for the Southern District of New York

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,

COUNTY OF NEW YORK, ss:

Raymond J. Braddick, agent for Hendler & Murray Esqs. being duly sworn,

deposes and says that he is over the age of 21 years and resides at Levittown, New York

That on the 1st. day of November 1976 at 40 Washington Square South New York, New York he served the annexed Appendix upon

Andreas F. Lowenfeld Esq.
Attorney for Defendant-Appellee
40 Washington Square South
New York, New York

in this action, by delivering to and leaving with said attorneys

3 true copies thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the person mentioned and described in the said action

Deponent is not a party to the action.

Sworn to before me, this .....
day of November 1976

Raymond J. Braddick

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1977